

REPORTER'S RECORD

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TRIAL COURT CAUSE NO. F01-00237-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
RANDY ETHAN HALPRIN * 283RD DISTRICT COURT

JURY TRIAL

FILED IN
COURT OF CRIMINAL APPEALS

OCT 10 2003

Troy C. Bennett, Jr., Clerk

On the 9th day of June, 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

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P R O C E E D I N G S

[Jury out]

THE COURT: Since Friday, the State has made additional recommendations to the charge. The bottom line is the Court is reluctant to add the extraneous offense conviction language in the charge. I did so on Friday. What's the State's position today?

MS. SMITH: The State's position is that it should be removed and that the extraneous offense beyond a reasonable doubt instruction should be included. We had omitted that on Friday.

THE COURT: Mr. Ashford? Mr. King?

MR. KING: I'm not sure what the State has said. They are saying that the extraneous offense instruction should be excluded?

MS. SMITH: No, I'm sorry. That should be substituted in and the prior conviction credibility charge should be omitted.

MR. KING: We ask for the credibility instruction that is currently in the Court's charge. We believe that is the appropriate instruction to give under the circumstances. And we object to the State's request.

THE COURT: I'm going to go back to my original logic position. The defense offered such testimony. I'm not going to limit the jury on the use of

1 your evidence.

2 MR. KING: Does that mean the Court is
3 not going to include either the State's requested
4 instruction or the defense requested instruction?

5 THE COURT: No. I'm going to include the
6 instruction that any other offenses or bad acts be proved
7 beyond a reasonable doubt.

8 MR. KING: So the Court is granting the
9 request of the State --

10 THE COURT: Yes.

11 MR. KING: -- to exchange their
12 instruction and adding the burden of proof of beyond a
13 reasonable doubt on that?

14 THE COURT: Yes, sir.

15 MR. KING: We have no objection if the
16 Court is changing that over our objection. We have no
17 objection to the reasonable doubt being added to the
18 extraneous, so it's clear in the record. We just object --
19 we think that the other charge is the most appropriate under
20 the circumstances.

21 THE COURT: One hour a side. I'll ask
22 the jury -- is the State going to split your time? Are you
23 going to open?

24 MR. WIRSKYE: Yes, sir.

25 THE COURT: How much time do you want up

1 front?

2 MR. WIRSKYE: Let me know after I've used
3 30.

4 MR. KING: Judge, we're going to split
5 our time, as well, and if the Court would give me a
6 20-minute warning, I would appreciate it.

7 [Jury in]

8 THE COURT: Thank you. You may be
9 seated. Good Monday morning. As advertised I'm going to
10 read to you the Court's charge, then the attorneys for each
11 side will have their final summations.

12 If you will, listen carefully. You will
13 receive a written copy, but I'm going to read it to you at
14 this time.

15 [At this time the jury charge was read to
16 the jury by the Court.]

17 THE COURT: With that we will have final
18 summations. Who will open for the State?

19 MR. WIRSKYE: May it please the Court.
20 Folks, let me thank you for your patience and attention. I
21 know it was a long week last week, but sometimes in crimes
22 this bad, sometimes with criminals this bad, it takes a
23 while with the overwhelming evidence to kind of paint or
24 complete a full and accurate portrait of all the evil that
25 occurred out there behind that Oshman's on Christmas Eve.

1 I'm going to spend a little bit of time
2 talking to you. When I sit down, the defense will have a
3 chance to visit with you and finally Mr. Shook, you will
4 hear from last from the State, I want to talk to you a
5 little bit about the crime. I want to talk to you a little
6 bit about the criminal and his mindset. And finally,
7 because the defense has put it in issue, I want to visit
8 with you about his character and some of the choices he's
9 made in his short and violent life.

10 One thing I will appeal to you as we go
11 throughout this process, I'm going to appeal to your reason
12 and common sense. Okay? So many times down here we have
13 jurors who come in and I don't know if it's because they
14 spend all this time around lawyers or criminals or what, but
15 for some reason they leave their common sense at the
16 courthouse door. Okay?

17 Don't be fooled. That's what he's banking on
18 with his lies and his manipulation, his spin. He's hoping
19 that just one of you, because that's all it takes, one of
20 you will lose your reason, lose your common sense, and not
21 see the forest for the trees. So I'll just beg you up
22 front, folks, you know, things don't change just because you
23 become a juror. Go back to the reason and the common sense
24 you had before you came down here to serve as a juror.

25 Let's talk a little bit about the Court's

1 charge. I will start where you should end, the back page,
2 verdict form, find him guilty of capital murder. Your
3 foreman signs the top line.

4 Recalling back to jury selection, I don't know
5 if you guys remember, but we talked with some of you guys
6 about this concept of lesser included offenses. And in this
7 case in that charge there is a lesser included offense. It's
8 aggravated robbery. The law is that if there is any
9 evidence, no matter how slight, no matter how unbelievable, no
10 matter how incredible, the defendant, if he's guilty is only
11 guilty of the lesser offense, then the Judge by law is
12 required to put that lesser included offense in the charge,
13 and it's in there in this case.

14 If you follow your oath, you look at the
15 facts, and you look at the law, you are never even going to
16 reach aggravated robbery, and here's why. The only way that
17 you twelve reach aggravated robbery in your deliberations is
18 if all twelve of you, each and every one of you, find him
19 not guilty of capital murder. If all twelve of you acquit
20 him of capital murder, that's the only point at which you
21 consider --

22 MR. KING: Your Honor, I object to
23 Mr. Wirsky's argument. It's a misstatement of the law.
24 The law requires that you have a reasonable doubt as to
25 whether or not he committed capital murder and the law does

1 not require them to all vote not guilty. It's a question as
2 to whether they have a reasonable doubt as to that. Then if
3 they have a reasonable doubt, then they can go on to a
4 lesser included.

5 THE COURT: Overruled. The jury has the
6 law before them in the charge.

7 MR. WIRSKYE: With this overwhelming
8 evidence, you are never going to find him not guilty of
9 capital murder, so you shouldn't even be concerned with that
10 lesser included offense. You will never reach it.

11 We also told you in jury selection, that
12 criminal cases in Texas usually break down into two
13 different phases, the first phase where you are usually
14 concerned about just the facts of the crime and then the
15 second phase, where you hear a little more about the
16 character and background of the defendant.

17 Because they have chosen to put his character
18 in issue, because they have chosen to make the argument that
19 Randy Halprin is of such a character, is such an upstanding
20 person that he wouldn't commit a capital murder, you got to
21 hear a lot of that evidence about character and background
22 up in the first part of the trial. So in that sense, this
23 trial is unique.

24 It's a good opportunity for you, because as
25 you face the decisions you are going to have to make, okay,

1 you know exactly who is sitting over here, a violent,
2 violent, criminal. It's a good thing for y'all that you got
3 to hear all that extra evidence and we're going to talk
4 about it in a little bit.

5 The Judge also talked to you, you know, he
6 read those six paragraphs on capital murder. You recall
7 back to jury selection what that is. We alleged in our
8 indictment that capital murder has been committed two
9 different ways. Okay? The murder of a police officer on
10 duty, the intentional murder during the course of a robbery.
11 Okay? And those are the two different ways we've alleged
12 it.

13 Also recalling back to jury selection, there's
14 three different ways the law allows us to prove that. Okay?
15 Either he's a principal, he's a party, or he's a
16 conspirator. Okay. So when you have three different ways
17 to prove the two different ways that's alleged, you get the
18 six paragraphs.

19 If you think that he shot and killed Aubrey
20 Hawkins, you will find him guilty as a principle. If you
21 think he aided, assisted, or abetted or encouraged some of
22 these others to kill Aubrey Hawkins, you are going to find
23 him guilty as a party. And, of course, if you believe he
24 entered into a conspiracy to commit aggravated robbery and
25 in the course and in furtherance of that robbery Aubrey

1 Hawkins was murdered and he should have anticipated it, you
2 you will find him guilty as a conspirator.

3 You know, that last way, folks, there should
4 be absolutely no doubt in your mind that he should have
5 anticipated what would happen out there. And just as the
6 evidence is overwhelming on that point, the evidence is
7 similarly overwhelming and would allow you to infer his
8 guilt as a principle and as a party. Okay?

9 That's what's in the charge. Again, I say
10 it's pretty much everything we've talked about in jury
11 selection. The evidence in this case is overwhelming.

12 Let's talk a little bit about the actual
13 crime. What did the evidence show us? The evidence showed
14 us one piece of evidence that is so important that you can
15 just consider that piece of evidence and make up your mind
16 and call it a day, find him guilty of capital murder.

17 What is that piece of evidence? The loaded
18 gun. They all had loaded guns. What's the importance of
19 that? As so many of you told us on jury selection, the only
20 reason to take a loaded gun to a robbery is because you
21 anticipate, you actually anticipate using it, you anticipate
22 trouble, you anticipate violence, you anticipate the police
23 responding to a call.

24 The fact that his gun was loaded and lethal,
25 tells you what his mindset was. And he had that lethal

1 mindset when he went into that robbery. That fact alone,
2 the loaded gun, is enough to decide this case and find him
3 guilty of capital murder, folks. Case closed.

4 But, of course, you have more evidence. You
5 have the evidence of the planning, the preparation, the
6 teamwork, the cooperation, all these things that went into
7 this crime. Each of them had a role. Each of them had a
8 gun. They started planning an Oshman's robbery before they
9 even broke out of prison. Okay? And it's just defies
10 reason and common sense that these violent, convicted felons
11 who had violently broken out of a maximum security prison in
12 Texas did not anticipate that the police may show up when
13 they decide to pull a robbery. It just defies reason,
14 folks. It's a completely ridiculous thing to argue anything
15 otherwise.

16 You know, Wes Ferris told us, you know, a
17 former gunnery sergeant in the Marine Corp. What did he
18 tell us? He said there was no doubt in his mind these
19 people would not hesitate to harm them, if they interfered
20 with his plans. And tragically, now, we know that was true.
21 They did not hesitate. Okay? They gunned down Aubrey
22 Hawkins. And just as surely as they would not be deterred
23 from executing their plan, they would not be deterred from
24 executing Aubrey Hawkins. Nothing was going to get in their
25 way. So it's that simple, folks.

1 You know, if they didn't want a violent
2 confrontation, they had plenty of opportunities to abort
3 this crime, to run off and flee. They had the backup car in
4 the apartments. They could have taken off running across
5 the field. Murphy is on the radio out front saying, hey, I
6 heard a call from Oshman's, suspicious person. On the radio
7 again, here comes the car. I see the cop. He's coming
8 around to the back.

9 They had every opportunity, if they didn't
10 want a confrontation, if they hadn't anticipated it, to run
11 off, but they didn't. They calmly and coolly moved to the
12 back of the store to where the threat was. Of course, they
13 weren't going to leave their guns, the object of their
14 criminal desires. They move back to where the threat was
15 and they took care of the threat in a deadly, deadly way,
16 and left a widow and a fatherless child. That's how they
17 chose to respond.

18 You know, the argument that these violent
19 criminals didn't anticipate this, is just beyond belief.
20 You know, somehow Randy Halprin would have you believe that
21 I guess he missed all those meetings where they talked about
22 planning this crime, that he just wasn't in the room when
23 they talked about it. Or perhaps he had you believe that
24 these violent criminals were silent on that point, that no
25 one talked about it. They just silently armed themselves,

1 prepared their ammunition, scored the bullets to make them
2 even more deadly, but no one ever mentioned, hey, what do we
3 do if the cops show up?

4 I mean, you know from Murphy's statement that
5 he was real familiar with the Irving Police Department and
6 their response time. But, again, folks, they didn't try to
7 avoid the confrontation. They started the confrontation.

8 You know, this issue of whether he's a party
9 or principle or shooter, think back to what you heard. By
10 his own testimony back at the Oshman's in those fatal
11 seconds of Christmas Eve, he puts four of them, okay?
12 You've got Murphy out front, he puts Newbury in the store,
13 he puts Harper up on the steps with the smoke bomb, when
14 Hawkins shows up. There are four people out there.

15 Ballistics tell us at least five weapons were
16 used, maybe more. Plenty of evidence to infer that he
17 pulled a trigger, that he lead directly to the death of
18 Aubrey Hawkins.

19 You know, he again wants you to believe the
20 story that somehow he didn't pull a trigger, he never fired
21 a shot, he never anticipated this would happen. We've heard
22 this talk about, gee, you know, Randy Halprin when he talked
23 to the police and he's talked to the media, he's always been
24 consistent about one thing, I didn't pull a trigger, I
25 didn't fire a shot, I never anticipated anyone would get

1 hurt.

2 And then they argue to you that this
3 consistency is a sign of his honesty and it's not. His
4 consistency on this point is a sign of his constant fear of
5 the ultimate penalty. Okay? His consistency is a sign of
6 his constant fear of the ultimate penalty, because there are
7 some things, some actions, he could never admit. He can't
8 admit to pulling the trigger. He cannot admit to firing a
9 shot. He can't admit to actual anticipation. Because if he
10 does, he faces the ultimate penalty. His life's literally
11 on the line. It's not a sign of honesty. It's a sign of
12 fear.

13 They may say when you look in his statement,
14 he admits certain things he doesn't have to. Okay. He
15 tells us things that make him look bad. Why would he do
16 that if he's being dishonest? You folks know better than
17 that. You know how liars work. You know how pathological
18 liars work. They tell these little half-truths, okay, that
19 may make them look bad. And they tell you these half-truths
20 to bolster their credibility, to gain credibility in your
21 eyes so you will believe them when they tell the ultimate
22 big lie.

23 And that's exactly what he did in the
24 statement. Okay? He admitted to the aggravated robbery
25 part, but he's never going to admit to the big lie, the

1 capital murder. That's why that's in there, folks,
2 criminals never ever understand the law of parties. And
3 because they don't, they think they can admit to an
4 aggravated robbery and somehow not face capital murder.
5 That's exactly what was going on with this pathological liar
6 in his statement.

7 Let's talk a little bit about Randy Halprin,
8 what we've learned about him, what his mindset was. And you
9 folks have really had a unique opportunity. You got to see
10 him testify. You got a glimpse into his mind, you got a
11 glimpse into his reasoning, and you see how a criminal's
12 mind works. And it ought to chill you to the bone because
13 they are just different than us, folks. They think
14 differently.

15 He doesn't look bad. He looks almost
16 harmless. He looks nice. But you know he's not. You know
17 he's deceitful, you know he's dangerous, and you know he's
18 deadly. And you know he's different than us and just like
19 any criminal, they can't help but show their true colors,
20 their true nature, when they talk on the stand.

21 When Mr. Shook had him on cross-examination.
22 They have a lack of empathy for their victims, they blame
23 shift, they minimize, they try to manipulate, and they feel
24 sorry for themselves. They think they are the victim in all
25 this.

1 I mean, let's look at all the lies he told on
2 cross-examination. And then it would almost be laughable,
3 but for the fact that we have a tortured child, terrorized
4 hostages and workers at Oshman's, and a dead police officer.
5 It would almost be laughable, but for that fact.

6 And I'll tell you his best lie that shows you
7 this criminal mindset, okay, that shows you this
8 psychopathic criminal. And you folks didn't get a chance to
9 see this. Mr. Shook took this yellow pad up there. This
10 yellow pad, as you recall, was found in his backpack in the
11 RV. Had it loaded up with the gun, had it loaded up with
12 the weapon.

13 Mr. Shook asked him about this. What do these
14 words mean? He hesitated for a while and you could almost
15 see the wheels turning. And he said, "Stick to the Lord".
16 I know it's hard for each of you to get a good look right
17 now. What it really says is, "Sick to the end." Okay?
18 That's a little glimpse into his reasoning. Sick to the
19 end.

20 Mr. Shook asked him about the little cartoon
21 figure. What is that? That's just a man with his hand out.
22 That's a man with his penis out who is masturbating. That's
23 a little glimpse into the sick, criminal mind of Randy
24 Halprin. It was so telling.

25 This was probably the one thing he was

1 truthful about on cross-examination. Mr. Shook asked him
2 when did you stop lying? And because he's different from
3 us, because he's a criminal, he couldn't even comprehend
4 that question. He couldn't conceive what Mr. Shook was
5 asking him. I don't know what you mean. I don't know,
6 yesterday, last week. Ask me something specific, Mr. Shook,
7 because everybody lies. That is a criminal mindset. That
8 tells you so much about him. Because he's different than
9 us. He always lies. We don't. Good law-abiding people
10 don't always lie. There's just a little glimpse into the
11 sick mind, the sick-to-the-end mind of Randy Halprin.

12 Let's talk about his lack of empathy for the
13 victim. Mr. Shook read you those letters. How hard has
14 this man worked to cash in on what happened out there, to
15 cash in on that murder, to cash in on the death of Aubrey
16 Hawkins? Book deals, "National Inquirer", blood money.
17 That's what he wants.

18 Oh, and like a typical criminal with a lack of
19 empathy, he says, gee, Mr. Shook, I was going to give some
20 of it to the victims. And he thinks somehow that makes it
21 okay, because he was going to give some of it to the
22 victims. And I'm just going to keep the rest to survive in
23 prison. Again, he's feeling sorry for himself. He's the
24 victim.

25 Does he blame shift? Does he minimize? Of

1 course he does. Listen to his words very carefully. When
2 asked about the gun, he said, "I was issued that gun. It
3 was loaded." He always takes himself out of the equation.
4 He always shifts blame, always minimizes. "I was issued
5 that gun," almost like it wasn't a voluntary volitional act
6 on his part. He got that gun and loaded it and took it into
7 that Oshman's and took it on their spree up to Colorado.

8 What else did he say? Well, I felt like I had
9 no choice. Gee, I felt like I owed George Rivas six months.
10 I didn't know what that means, folks. Other than an attempt
11 to shift blame and minimize his actions. He would have you
12 believe -- he said he wasn't against his will, but I guess
13 he would have you believe that George Rivas had some hold
14 over him, had hypnotized him, had cast a spell on him that
15 puts a magic dust in his cereal. I don't know what that
16 means, other than it's a criminal's attempt to shift blame.

17 All the excuses he had. Gee, that was during
18 my drug phase, when he talked about what he did to that
19 infant. He said, well, I'm not going to blame drugs, but,
20 gee, I was on LSD and I just snapped. I kind of felt
21 pressured into watching that child. Excuses.

22 Talking about the parole system, he basically
23 blamed the parole and prison system for his breakout. If
24 you can conceive of that twisted logic in his mind. And
25 somehow he wants you to feel sorry for himself because his

1 adoptive parents who gave him every opportunity and every
2 chance since five years old, for some reason just cut out
3 contact with him after he tortured the child. He's feeling
4 sorry for himself. He doesn't understand how regular
5 people, people like us, would not want anything to do with a
6 man who would torture a child.

7 Wants you to feel sorry for him about the time
8 he spent in prison. Gee, I was out working the hoe squad in
9 the hot sun. That was before they gave me sunblock. Come
10 on, folks. I didn't get many visitors, very little mail. I
11 didn't have any money for commissary. Again, shows you a
12 glimpse into his criminal mind that he is always the victim.
13 That's how he is always going to feel.

14 He's trying to manipulate you folks just like
15 he's tried to manipulate everyone and everything in his
16 life. Remember the O. J. remark? Mr. Shook caught him on
17 that, didn't he? Going to try a different change of
18 clothes, going to try the glasses. Remember what he said,
19 quote, "You know, I got this from O. J. This shit works".
20 Okay?

21 Well, you are going to be the ultimate judge
22 of whether that stuff works, folks. By you finding him
23 guilty of capital murder you are going to tell him it
24 doesn't. His cheap transparent attempts to manipulate his
25 way out of the responsibility for the death of Officer

1 Hawkins.

2 You know, again, what makes him so dangerous
3 is he doesn't look like he's dangerous. He looks harmless.
4 You know, violent criminals don't come with a warning label.
5 There's nothing to tell you if you walk up to him on the
6 street, gee, I tortured a child, I broke out of a maximum
7 security prison, I've gunned down an officer and I'm on the
8 run. You know? They are just different, folks. They just
9 really are.

10 Let's look at his character. What does his
11 character boil down to? It's basically I guess you can say
12 your character is the sum total of the choices that you make
13 in your life.

14 Look at the choices he's made. Everywhere he
15 goes he is surrounded by violence, surrounded by this aura
16 of evil. He leaves a trail of deceit, destruction,
17 devastation, and death everywhere he goes. He leaves a wake
18 of broken bones and broken lives. That's his character,
19 folks. That's his character.

20 You know, they say he's not the baddest of the
21 bad. We've heard that, heard some of it. You know, how
22 would you describe the baddest of the bad? Someone who
23 tortures children? Someone who breaks out of prison?
24 Someone who guns down police officers during the course of a
25 robbery?

1 I'll submit to you that he is the baddest of
2 the bad, you know? They may say, you know, he's not as mean
3 or as dangerous as the other six people. Don't be fooled by
4 that argument. Keep your common sense, okay? If you are
5 walking along outside and you walked up on a nest of rattle
6 snakes, it's just useless to try to figure out which one of
7 them is the most dangerous. Because if you get close
8 enough, they will all bite you with their lethal venom and
9 kill you.

10 And that's exactly what is going on here.
11 They are bad, they are dangerous, they are mean
12 individually, and when they get together as the seven, they
13 have this kind of, I don't know, evil, synergistic effect,
14 okay? The sum is greater than the total of the parts. They
15 can commit more evil. They are all the baddest of the bad.

16 He says he's not a monster. Remember him
17 saying that? He's not a monster. Remember Jared Smith, the
18 infant he tortured? Somewhere today probably, he's five,
19 six, seven years old and hopefully he's living a life like a
20 normal child. And like a normal child, he probably has a
21 normal child's nightmares. There's a monster under the bed,
22 there's a monster in the close --

23 MR. KING: Your Honor, we're going to
24 object to that being outside the record.

25 THE COURT: Overruled. The jury will

1 recall the evidence they heard from the witness stand.

2 MR. WIRSKYE: But unlike normal children,
3 when Jerrod Smith has that nightmare about monsters, his
4 monster has a face and it's the face of Randy Halprin.
5 Don't buy off on he's not a monster. Think about what he
6 did to that child. Think about what he did. A fractured
7 skull, two broken arms, broken legs, the child can't even
8 get away from him and he's crying for his mother. And then
9 to shut him up because he's sick of hearing him cry, he
10 takes a lit cigarette and tortures the child on the inside
11 of his mouth. That's who you are dealing with.

12 You don't think a person that's capable of
13 that is a person that is capable of this? Of course they
14 are. That's why character is so important.

15 Eleven shots, six to the head, three or so to
16 the back, almost point blank range. Of course they are
17 capable of that.

18 They may say, well, he's not very smart. They
19 may say, well, he's not very courageous. He's a coward.
20 And I will gladly stipulate to you right now that you are
21 looking at an ignorant coward. Intelligence is not a
22 prerequisite for dangerousness. Courage is not a
23 prerequisite for dangerousness.

24 These seven, they are a pack of predators.
25 And, like a pack of predators, they pray upon those that are

1 young, weak, defenseless, those that are isolated, those
2 that have been caught by surprise. That has nothing to do
3 with intelligence. It's an innate instinct that predators
4 possess. They have an innate instinct to ambush people and
5 that's exactly what they did.

6 These people don't want any part of a fair
7 fight. When they are surrounded, they will come out with
8 their hands up and beg for their life, just like the cowards
9 they are. But when they have you surrounded and they have
10 you caught off-guard, you end up like Aubrey Hawkins. Don't
11 buy into that argument, that somehow he's naive or not
12 smart.

13 They said he didn't have a skill for George
14 Rivas to take him out of the prison with him. He didn't
15 need much of a skill, folks. All he needed was that evil
16 mind, the predisposition for violence, and a trigger finger
17 that worked. That's what he brought to the group. That's
18 the only skill that he need to be a member of the Texas
19 Seven.

20 They said, well, in prison he didn't really
21 have any major infractions. He wasn't a member of a gang.
22 What he did in prison was manipulate the system. He worked
23 himself into a job in that maintenance shop that would allow
24 him access to escape, just like the others did. You don't
25 give him credit for that manipulation.

1 Maybe he wasn't in the Arian Brotherhood or
2 some other prison gang, but I'll submit to you he was in a
3 gang. The Texas Seven are just as bad as any gang we've
4 seen, any prison gang, probably worse, because they know how
5 to break out of our prisons. Don't buy into that argument,
6 folks. It just doesn't make sense.

7 You know, he said when he broke out, again
8 going back to his twisted logic, well, gee, I knew that if I
9 made parole in 15 years, even if I was rehabilitated, I
10 wouldn't get parole, so that's why I broke out. If you can
11 follow that contorted, twisted psychopathic logic. I didn't
12 have any intent of anything violent happening. I just
13 wanted to go to the Pacific northwest and retire in
14 anonymity in Seattle. That's what he says.

15 You have the prison letter, folks, that tells
16 you what his state of mind is when he broke out. And that
17 sort of mix of theology and threats, what's the last thing
18 he says? He says, "Believe me, you haven't heard the last
19 of me -- you haven't heard the last of us." That is a
20 threat that tells you exactly what his intentions were when
21 he broke out of the prison, tells you exactly what his
22 mindset was. If he wanted to fade away to Seattle, he would
23 have said, gee, folks, you have heard the last of me. That
24 would have been the note he left in his cell. But he
25 didn't.

1 What is so important about his mindset, as we
2 look back to Christmas Eve? Look at what happened after the
3 crime. They didn't break up. If you want to evade capture,
4 you break up, go your separate ways, to try to lessen your
5 chances of getting captured. Or if you want to go to
6 Seattle, you take the first chance and hightail it up to the
7 Pacific northwest, but he didn't. By his own admission he
8 had opportunity, chance after chance, and he didn't take it.
9 And the reason, very simply, is because he wanted to be a
10 member of this gang. This gang had not finished, you know,
11 its criminal purpose. They had not fulfilled their criminal
12 goal. They stayed together because, again, the evil sum of
13 the total was greater than the parts.

14 Look at what they took. I mean, it looks like
15 a National Guard armory, folks. Why do you think they took
16 those weapons? What do you think they had planned for the
17 future? Why do you think he stuck with that gang? He stuck
18 with it because his lust for money, his lust for violence,
19 and his lust for other things was not satisfied. That's why
20 he was still with those seven, ordering bulletproof vests.
21 You heard about that. They may say, well, there's only an
22 order for four. Randy obviously wasn't one of the ones with
23 the ballistic vests.

24 I'll ask you to remember back to the early
25 part of 2001. Do you think it might have sent up some red

1 flags when an order came in for seven bulletproof vests? Do
2 you think so, folks?

3 Anyway, again, reason and common sense you
4 know why they stuck together and you know what kind of gang
5 they were. You know what they are capable of. He's not the
6 nonviolent, naive person they would make him out who really
7 had no active involvement in this crime.

8 Think of the prison break, the violence there.
9 What did Marroquin tell you? What you did Mr. Burgess tell
10 you? Slamming the head on the pavement. Of course he lied
11 about it. Pulling the arms back, making that threat to Mr.
12 Burgess. "You thought I liked you. Give me any trouble, I
13 won't hesitate to kill you." Didn't -- you know, and that's
14 the truth, folks. That's the glimpse into his mind. They
15 didn't hesitate. If anyone gave them any problems, they
16 ended up like Aubrey Hawkins.

17 He's not naive. You know, the only person
18 that can tell us exactly what happened back there behind the
19 Oshman's is Aubrey Hawkins. They shot and killed the
20 eyewitness. They shot and killed the police officer that
21 could have apprehended them. Because of that, we have no
22 eyewitness.

23 But when you sit through this trial, you hear
24 his lies, you hear the evidence, you see his character, you
25 see his other actions, those all speak as loudly in this

1 courtroom as probably any eyewitness could with respect to
2 what part he played, what role he played, what his active
3 involvement was on Christmas Eve. You know he's a liar.
4 You know he's violent. You know he's trying to escape
5 capital murder. Don't let him manipulate you. Don't let
6 him get away with it.

7 I mean, you folks ought to be tired, tired of
8 violent criminals like this in our society. Even when you
9 get them behind bars, they don't stay there, they are so
10 violent. And when they get out, they murder a police
11 officer.

12 And I'll submit to you at this point Randy
13 Halprin needs to be held accountable for his character, for
14 his choices, for his actions out there behind the Oshman's.
15 And your finding him guilty of capital murder is the first
16 step in holding him responsible. Okay?

17 You have every right to come together, find
18 him guilty of capital murder, and exercise the sort of
19 communal right to self-defense that all of us regular
20 citizens have. This communal right to self-defense to say
21 enough is enough, Randy Halprin, stop the violence, stop the
22 killing, stop the death.

23 And when you go back there and find him guilty
24 of capital murder and make justice swift and make justice
25 sure, when you go back there and find him guilty of capital

1 murder, the one and only inescapable verdict in this case,
2 you will start the process of holding him accountable for
3 his actions. Thank you, folks.

4 THE COURT: Mr. King?

5 MR. KING: May it please the Court,
6 Mr. Wirskye, Mr. D'Amore, Mr. Shook.

7 Ladies and gentlemen, you know it's been a
8 long week. And when you've been doing this as long as I
9 have and you listen to the State open up their argument and
10 you listen to everything they say, you come back to the
11 conclusion, I didn't hear Mr. Wirskye say, folks, we've
12 proved it to you beyond a reasonable doubt that this man
13 right here shot Aubrey Hawkins.

14 And the reason why you didn't hear that from
15 Mr. Wirskye is because there is no proof beyond a reasonable
16 doubt that he shot Aubrey Hawkins. And Mr. Wirskye is a
17 great lawyer, Mr. Shook is an excellent lawyer, and Mr.
18 D'Amore is an excellent lawyer. They've had three years to
19 go and scour the countryside, which you know they have.
20 They have gone to the far reaches of the corners of Colorado
21 and Texas to bring you witnesses, run down witnesses. You
22 know Detective Spivey went to great lengths to go take
23 statements. We had the FBI, the ATF, the Colorado Springs
24 Police Department, the Pueblo City Police Department, the
25 Teller County Sheriff's Office, the El Paso County Sheriff's

1 Office, and all the king's horses and all the kings's men,
2 and what did they bring you?

3 They want you to infer. That's what they want
4 you to do. They want you to guess. That's what they want
5 you to do. And that's what you do when you can't prove
6 something. You try to stampede a group of folks into
7 guessing and inferring something from the evidence when it's
8 not there.

9 You know, this is a horrible crime. And on
10 voir dire we asked you, what do you know about this case?
11 And there wasn't anybody here that didn't say, you know, I
12 heard they escaped from prison. What's that tell you?
13 They've been convicted of something. And if they're in
14 prison, it's got to be pretty bad.

15 What else did you hear? I heard they were
16 robbing an Oshman's. That come as a surprise to you in the
17 last eight days? What else did you hear? I heard that they
18 shot and killed a police officer. What else did you hear?
19 I heard they ran to Colorado and that's where they were
20 arrested.

21 Well, you seem to feel pretty strongly about
22 all that stuff. Are you telling us that you can still
23 consider the evidence and be fair in a trial of this kind?
24 Yes, I can. I can raise my hand, I can take an oath, and I
25 can say, you know what? Even armed with all that

1 information, I'll make these people right here prove this
2 case to me beyond a reasonable doubt, because that's what
3 I'm telling you that oath means to me.

4 So let's start at prison. You know, they
5 brought you a couple of people from the prison break.
6 What's the sum total of Randy Halprin's involvement in the
7 prison break? Well, is he the guy with the shank? No.
8 He's the guy with the mop. That's point No. 1.

9 All those people, what, we have 14? Fourteen
10 people. Not a one of them can put any kind of real weapon
11 in his hand during the course of the prison break.

12 Mr. Burgess can put a mop in his hand. You know, when you
13 look at Mr. Burgess and you say, well, here's your statement
14 you gave that day and the following day. And you look at
15 them, what's he talking about? Rivas or Garcia or somebody
16 else is pounding heads. He's added as an afterthought.

17 When you look at Marroquin, what's he say?
18 He's added as an afterthought in the statements. And what's
19 he doing? He's following George Rivas' instructions. Well,
20 any question about that, Mr. Burgess? Mr. Marroquin? No,
21 no, he would do that. Rivas would tell him to go do
22 something, he would go do that. Rivas tell him to do
23 something else, he would go do that. Rivas told him to do
24 this, he would go do that. That's the kind of guy this is.

25 Now they've got an opportunity to go down and

1 bring you from prison the horrible criminal or prison record
2 of Randy Halprin to show you that he spit on guards or he's
3 been engaged in assaultive conduct on guards. We put him on
4 the witness stand, knowing full well after we pass him that
5 Mr. Shook who -- Mr. Shook could make the Pope look bad on
6 the witness stand.

7 And that was a classic law school example of
8 how you take somebody who you are smarter than and you twist
9 them and you turn them and you make them look bad on the
10 witness stand. You ever lie? What do you say? Yes or no?
11 You say no, oh, are you telling us you have never lied? You
12 say yes, then what are you? You are a liar. And it's a
13 game you can't win. You can't win that game. You can't win
14 that game when you write your parents from prison and go,
15 you know what, I know I did this bad thing. Would you write
16 me?

17 You can't win that game when you live in
18 prison five years and you got no visitors. And you know
19 what? Tough. That's tough. Some people get no visitors in
20 prison. Some people get no letters in prison. Some
21 people's parents, I guess, write them off at some point in
22 their lives and say, you know what, we adopted you, things
23 haven't worked out exactly the way we think, so we're going
24 to push you out of sight, out of mind, because that's a
25 whole lot easier than trying to come to grips with the

1 situation.

2 And, yeah, yeah, as opposed to George Rivas,
3 Michael Rodriguez, Donald Newbury, Patrick Murphy, Larry
4 Harper, Joseph Garcia, whose conduct that leads them to
5 prison is a series of planned, thought out escapades, not
6 some spur of the moment snap, loss of judgment, of an
7 18-year-old kid. That's not what it is.

8 He gets a 30-year sentence that he pleads
9 guilty to for injury to a child. And you will notice that
10 Mr. Shook even wanted to relay the ear infection at Randy
11 Halprin's door. And they bring the good doctor and the good
12 doctor has reviewed his medical records, but you know what,
13 he doesn't review all the records in the file.

14 And this thing about the ear bleeding, you
15 know, it doesn't take a brain surgeon to figure this part of
16 the deal out. The kid had a bad earache. The kid had an
17 earache bad enough where it ruptured the child's eardrum.
18 They treat it in the medical record with Amoxicillin and
19 penicillin or whatever they do to fight that earache.

20 But you know, if you have got children, a
21 child that age who has a severe earache, what are they
22 doing? They are crying all the time, because they are in
23 pain. They are in pain from the earache. But no, no, no,
24 that sounds bad, so why not, why not, lay it at his door?
25 Why not?

1 Oh, well, he opened his mouth and burned him
2 with cigarettes. And then you get the doctor on the stand.
3 And what does the doctor say? Well, no, I can't honestly
4 tell you medically it's a cigarette and, yeah, you can have
5 ulcers in your mouth. Yeah, that could happen, too. But
6 they brought the child down and the child had been tortured.
7 He had broken bones and broken legs.

8 And I guess if I hadn't asked him the question
9 about the earache, you would have been left with the
10 impression that, you know, that child didn't have any ear
11 problems and Randy caused his ear to bleed. And you know
12 what? That's not the truth. That's not the truth.

13 Now, he gets arrested in Colorado and he gives
14 a statement to the police and what does he tell them? We
15 get out of the prison and we rob one store and then I don't
16 go with them on the second robbery, because I don't want to
17 go and they leave Rodriguez with me.

18 Maybe the State will bring you some evidence
19 about the particulars of those two cases and maybe, maybe,
20 since they have got that ability to bring witnesses that you
21 have seen and put them on, either they will have somebody
22 that can say, you know what, we saw him there or they would
23 have nobody who can say they saw him there.

24 Who is this guy? This is the guy who's not
25 part of the red team, he's not part of the blue team, he's

1 not really part of it.

2 You know, Mr. Wirskye talks about these four
3 bulletproof vests. At what point in time did they buy these
4 bulletproof vests? Did he go? No. And they know this.
5 They know this. Because at this point in time, what's
6 happened up in Colorado? At the point in time they are
7 talking about these bulletproof vests, Murphy and Newbury
8 have pretty much split off from the group.

9 What's the testimony when Halprin and Rivas,
10 Garcia, and Rodriguez that day all get arrested? Those
11 other guys had been gone for a day or two. They are gone.
12 The money is split up. They have split up guns and those
13 guys are arrested days later in Colorado Springs with their
14 money, with their guns.

15 What's that leave? Well, it leaves five
16 people, right? It leaves Halprin, Harper, Garcia,
17 Rodriguez, and Rivas, four vests. Four vests, not five.
18 Four. The party was over. Everybody was breaking up.
19 Randy wasn't going to be included, one way or the another.
20 You know why? Because he can't be depended on in a crunch.

21 Now, we offered in all these statements of all
22 the other fellas that the police took and offered in those
23 statements for a reason. Because if you read through those
24 statements, you get a feeling of what is consistent among
25 what they say. What are we talking about? We're talking

1 about an 18-second period of time, a 30-second period of
2 time and a 46, 47-second period of time.

3 When they enter the store, Randy Halprin is
4 doing what he said he was doing. If you read the
5 statements, what you see is that he and Rodriguez go in
6 first to act as shoppers. Garcia and Newbury go in second.
7 And Harper, the executive officer, and Rivas, the CO, they
8 go in. They are the security guys.

9 We have the people that are getting the
10 clothing, which is Rodriguez and Halprin. We've got the
11 gatherers. And who are the gatherers? They are the ones
12 who are going to gather up the employees. You look at
13 Newbury's statement and when he's talking, he says, look, I
14 loaded some stuff in a cart, I got the gun manager to go up
15 to the front. Rivas had everybody else up there. And when
16 he said it was a robbery, a couple of those guys started to
17 do something, I had my gun out poking them in the back and
18 keeping them from pushing a panic button.

19 I'm sorry, how many employees did we have in
20 Oshman's, 16, 16 employees? And who did we hear from? We
21 heard from Wes Ferris. Who says what? He says, well, you
22 know, we got up there, there was six to eight guys behind us
23 with guns, two guys here in front of us. That's either ten
24 -- we know that number is not right, don't we? We know that
25 the number is not right. Or it was three to four guys with

1 guns.

2 And you know what, Mr. Ferris, he's -- people
3 don't carry watches and look at them and try to time an
4 event when it's going down. They don't time it. But what's
5 he tell you? He says, you know what? Rivas is standing in
6 front of me with a gun and I turned around and I looked
7 behind me for 20 seconds. Go. That's 20. That's -- you
8 know, think about that. Do you really think that's
9 reasonable? Do you really think Mr. Ferris, being the
10 Marine that he is, took his eyes off the guy who has a gun
11 in his chest or in his face for that length of time? No.
12 He did a quick look, saw people behind him with guns, turned
13 back around. Keep his eye on the ball. He's dealing with
14 the guy who is doing the talking. He's trying to keep
15 everybody else safe. That's what his objective is and
16 that's what he accomplished.

17 The guy would throw Randy in there with a gun
18 somewhere. But, see, Randy has already done this. In the
19 statement he said, look, I had a gun and it was loaded. I
20 took a gun in there. You know, he could have put in his
21 statement, no, I didn't take a gun in there. But he tells
22 you. I took a gun in there.

23 But what's he doing? You read through the
24 statements and what you see is while the other guys are
25 herding everybody to the back, what's going on? Well,

1 Rodriguez finds this other employee, because he's over there
2 with the shopping cart and the area where Randy is. Randy
3 is in the ski coat area. Rodriguez is in the other area.
4 And over by the fitting rooms he finds Laura Fernandez and
5 he gets her. That's happening after they have got everybody
6 up at the front.

7 Because, you know, Rivas has already started
8 this robbery. It's going down. That's why they are
9 starting to look. They have to wait for that to happen.
10 And then they go look. So they are back off behind
11 everybody. They are not part of the gatherers, pushing
12 everybody up.

13 What does Randy do? He does what he's told to
14 do. He's told to go over and do this. They give him a
15 shirt. Go stand at the front and look busy. The phone
16 rings. What do I do? Answer it. You know, he's not doing
17 nothing without somebody telling him the simplest thing.

18 What did Burgess tell you? Well, he's dumb as
19 a bag of rocks. You have to tell him to do everything
20 twice. He's fine. You tell him to do something and he does
21 that thing. And then you have to tell him to do the next
22 thing.

23 They are leaving the store. They are hearing
24 on the radio that Murphy is saying there's a police officer
25 there and Rivas is telling him to get out, get out. Rivas

1 has already gone outside, gotten the Explorer, and swung it
2 around back. He's trying to get everybody to the back.
3 They're not hiding out of sight. They're -- looking at the
4 statements, they're all out there loading clothes.

5 You know what's interesting is, when you look
6 at the statements, Randy in his statement says, I got there
7 first. I got to the back door first. I was ready to get
8 out. And then Harper tells me go back and get the sleeping
9 bag.

10 You look at the other statements of Newbury
11 and Newbury says Harper sent somebody back to get something.
12 And when he started to come back into view, we're out.
13 Rodriguez says, you know, Harper was the first one out. I
14 was like second or third. Harper fell on the stairs and I
15 bowled him over.

16 You get the picture of what's going on out
17 there? Newbury says, I'm out there, other guys are out
18 there, and everybody is trying to pile stuff in. The hatch
19 on the back they can't figure how to open it. They are
20 having to load stuff through the back passenger seats over
21 the back into the cargo area.

22 And what are we talking about? Eighteen
23 seconds, 30 seconds. This is happening pretty dang quick.
24 You know, Harper is outside. Harper is also trying to run
25 up and light the smoke grenade also. And in Rivas'

1 statement, he says, I don't know when Harper -- all I know
2 is during the gunfight, Harper got in the car. During the
3 gunfight.

4 These guys were all loading stuff and what
5 happens? Officer Hawkins pulls up. Rivas starts walking
6 forward. And what is Rivas' gig? Rivas is the con. I'm
7 going to pull out my badge. I'm going to get everybody
8 focused on that and convince them I'm security and then I
9 can diffuse whatever situation.

10 What does Randy say? Well, that's what I
11 thought he was going to do. And I'm standing there. He
12 told me to stay where I was, so I stayed where I was. He
13 walked over and he started to shoot. He shot four times.
14 And you look at the description in the other statements, all
15 that is consistent. Rivas is on the driver's side. Rivas
16 says he walks up to the window and shoots Officer Hawkins.

17 You know, the ballistics, what they found in
18 the body of Officer Hawkins comes from two separate guns.
19 They say that there's five guns fired out there, but they
20 say there's two separate guns. Everybody supposedly had two
21 guns. And if you read through the statements, supposedly
22 everybody only took one gun. Of course, Murphy says he's
23 got two guns in his statement.

24 The shooting starts. Everybody panics. He
25 runs. And you see all these nice looking dowels here? This

1 is a horrible event. You take one of these dowels and you
2 line it up with Defense Exhibit 32 and Defense Exhibit 25.
3 Because, you see, nobody really wanted to know what kind of
4 injury Randy Halprin really had. That's why they don't
5 really go and get any medical records and see what the
6 doctor's initial statement is and see whether or not there's
7 a hole on the side of the toe that leads over and goes
8 across. Because, see, if you do that, then you didn't shoot
9 yourself. Somebody else shot you, you know. If you put
10 your foot up and you have a hole over here and it exits on
11 the other side and hits your other toe, then the bullet came
12 from over here, right? That's what Brett Mills explained to
13 us about trajectory and straight line. That's why Dr.
14 Barnard and go and say here's how we know you can put the
15 dowels through because it shows bullets travel and unless
16 they hit something and ricochet, a straight line.

17 But, see, this doesn't lend itself to the
18 State's theory, because the State's theory is what? Randy
19 must have shot Rivas. He shot himself. He was discharging
20 a gun, you see.

21 They get back and they are loading people up.
22 Newbury and Murphy, Joseph Garcia, and Larry Harper have
23 eyesight problems. Newbury says, you know, I'm sitting in
24 the front seat of the car. Halprin comes running up. He's
25 in the car. He's screaming he's shot. He's sitting on my

1 lap at this point and we're driving off. Apparently we've
2 left a couple of people out there. If you look at Rivas'
3 statement, it's Garcia and Rodriguez. Newbury said, I was
4 shooting at somebody over in a car over there at this point
5 in time. I thought it was a police officer. I'm shooting
6 through the windows of the Explorer, mind you, with Halprin
7 sitting on my lap. So you can picture this weapon being
8 fired inside the car busting out all the glass, shooting at
9 somebody they can't tell who it is. That's Newbury.

10 And what does Newbury tell you? They get back
11 to the drop-off spot and he and Rivas and Garcia all leave
12 in a car. And Newbury is reloading. That's what Newbury is
13 doing. Newbury is reloading. Harper and everybody else,
14 they go out in the Suburban.

15 Harper's blood is found on the rear passenger
16 door, placing him at least in that spot. How he got cut,
17 flying glass, reaching in a police car, whatever. Rodriguez
18 says he's the one who pulls the officer out of the car and
19 backs the car up 20 or 30 feet. Did he get out and leave
20 the car in reverse and the car just rolled on back by
21 itself? Newbury says, you know, Garcia was the one coming
22 from the car over there by the trailer. That's how the
23 shots get in the trailer.

24 Murphy says he's crying so bad, I got to slap
25 him. We thought he shot Rivas. We get back -- and can't

1 you picture this? They get back and the blame game starts.
2 You stupid so and so. You shot him. You shot yourself and
3 you shot him. Rodriguez says Randy Halprin didn't shoot,
4 didn't fire his gun. And Rodriguez in his statement says
5 his gun had fallen down his pants leg. Randy Halprin gets
6 on the witness stand and says, you know, when we got dropped
7 off, I had to get my gun out of my pants leg and I stuck it
8 in a bag. Who is with him? Rodriguez is with him, because
9 they leave in the Suburban, him and Murphy and Harper.

10 They go back. The blame game starts. Who did
11 what? Rodriguez, well, I dropped my gun. Who did what?
12 Well, Rodriguez, I left the ammo. I left an ammo bag.
13 Halprin, you must have shot everybody. That's not it.
14 That's not it because you know what they do? They check the
15 gun.

16 And what does Murphy say in his statement?
17 Murphy, you know, he's not there. He doesn't see. He's on
18 the other side. But what's he say? When I get back to the
19 place and we're talking about what happened, there's a
20 combined report. It's either Rivas or Harper killed the
21 officer. Rodriguez or Garcia, the one that pulled him out.
22 Kind of confused there, but you are grouping people up.
23 Because I checked the guns. He didn't shoot. Harper shot,
24 Garcia shot, and Rivas shot. They know that.

25 Who else do we know shot? We know Newbury

1 shot. Who else do we know shot? Rodriguez shot. How do we
2 know that? They find his gun, they find the bullet in the
3 dash of the squad car, and they match it up.

4 Folks, that's five. They can't make a case on
5 Randy Halprin for being a shooter. That's why you are to
6 infer. That's why you are to infer that he is one. You
7 see, the only way they can get there is conspiracy. That's
8 the only way they can get there is say, you know what? He
9 agreed to commit an aggravated robbery. And you know what?
10 He dang sure did. And he broke out of prison. He sure did.
11 And he had a gun. He sure did. But he didn't shoot this
12 good man. He didn't do that.

13 And they can call him a liar and they can say
14 he's a child beater and they can say all that kind of stuff,
15 but that don't make this true. And your job here is not to
16 guess him into something. It is to be convinced beyond a
17 reasonable doubt that he either shot this man or had the
18 same intent to shoot this man or if it was a conspiracy and
19 he agreed to commit an aggravated robbery, that he should
20 have anticipated this man would be shot.

21 That's their burden. That's what they told
22 you they would do in this case. And they haven't done that.
23 Thank you for your time.

24 MR. ASHFORD: May it please the Court?

25 THE COURT: You have 33 minutes.

1 MR. ASHFORD: Counsel, ladies and
2 gentlemen of the jury.

3 If I overlap a little bit with Mr. King, I'm
4 going to apologize there, but we're both used to being lead
5 counsel and I didn't want to say, Mr. King, you just get up
6 and talk about this exclusively and leave everything else to
7 me. Because I, of course, value his input. So we may
8 overlap a little bit.

9 You know, when the State decides that they
10 want to try a case for death, capital murder, these types of
11 cases, they go all out. They get their best lawyers. They
12 bring everything. They bring overhead. They bring TV. Not
13 only TV, but big screen TV. All the people they bring you
14 are supervisors. They bring you evidence and they bring you
15 pictures of the evidence. They bring you FBI charts and all
16 kinds of things. You know, they bring you diagrams of the
17 scene. Then they bring you metallic diagrams with magnets.
18 They bring you charts, blown up. They even bring you a
19 chart just for Officer Hawkins' gun and what model it was.

20 They bring you Dr. Barnard, not just anybody
21 from the Medical Examiner's Office, they bring you Dr.
22 Barnard himself. Rather than just his report that shows the
23 injuries, you know, they bring you this. They bring you the
24 dowels. And, oh, yes, the guns. They bring you the guns.
25 They bring you the pictures of the guns. You know, you

1 think about it. Nobody actually saw all of these guns, but
2 you. Some of these we know were used in the robbery. These
3 were stolen and were in the RV with Rivas and the others
4 when they got arrested.

5 That's all for effect. It's all for effect.
6 You get up and you get a powerful argument and you hear the
7 word "evil," "liar," "pathological," "criminal." How many
8 times did you hear that? It's for effect. It's for effect.

9 Keeping in mind we started out this case from
10 voir dire, as Mr. King told you, but certainly on opening
11 statement telling you that Randy Halprin participated in an
12 aggravated robbery, that Randy Halprin broke out of prison.
13 All of this is for effect and it's to keep you off of the
14 main issues.

15 No. 1, did Randy Halprin fire a shot at this
16 officer? In fact, did he even take his gun out? Did he
17 anticipate that something like this would happen? Now,
18 those are the issues. Now, on voir dire we talked about
19 mental discipline. Were you going to have the type of
20 mental discipline to know everything that you know, but
21 still concentrate on the issues, not be overwhelmed by the
22 evidence, because you know he actually used the word "the
23 evidence is overwhelming". Well, certainly the exhibits and
24 number of exhibits are overwhelming. It's meant that way.
25 It's contrived to be that way.

1 But you have to exercise the type of mental
2 discipline that we've talked about in order for you to reach
3 these decisions. And I will agree with Mr. King one hundred
4 percent. It's whether or not they have proved to you beyond
5 a reasonable doubt those issues.

6 Let's talk about that, whether or not he fired
7 his gun or not. Mr. King talked about all the people at the
8 Oshman's. Here they are. This is all of them. Who told
9 you that Randy Halprin had a gun besides Randy Halprin?
10 One. I don't want to go over it again, but you know, 20
11 seconds, you got a gun in your face, it's just been pulled,
12 you are going to turn around for 20 seconds? Huh-huh.

13 They got to put him with that gun in his hand.
14 More importantly he gave a statement, folks. He wrote out a
15 statement. It's in evidence as a Defense Exhibit of
16 everything that he saw. And then he did another one and he
17 pointed out on the big chart, another big exhibit we got,
18 who he could identify and he didn't identify Randy Halprin.
19 He did not identify him.

20 And then he comes in here two years later,
21 more than two years later, and says, well, I identified him,
22 but I just didn't write it down. With all the mounds of the
23 evidence that we've had, with all the reports that we've
24 had, you know, don't you find it unusual that didn't one
25 officer come in maybe to back him up and say, I have here in

1 my notes where, you know, being the standup guy that he was,
2 he didn't want to put his initials by anybody that he wasn't
3 sure about, but he at least said, well, yeah, this guy looks
4 familiar.

5 Every one of these people, you know, did the
6 same thing. Every one of these people gave a sworn
7 statement and looked at that lineup to see if there was
8 anybody that they could identify. Not anybody that they
9 could see with a gun in their hand, but that they could
10 identify as even being there. And common sense tells you,
11 folks, that if any credible individual could come in here
12 and say on this night, that identify Randy Halprin as being
13 there, they would have testified.

14 Why am I saying that? He admitted he was
15 there. He wrote it in his statement he was there. Folks,
16 it goes to the fact of whether he pulled out his gun. It
17 goes to the fact whether he carried a weapon, because I told
18 you consistent with his character and with the role that he
19 played, he was staying out of all that controversy and all
20 the confrontation.

21 You know, it's kind of like, you know, when
22 your kids, you tell them not to get the cookies out of the
23 cookie jar and you put it up high. One of them goes up
24 there and climbs up there and gets it out. He may be
25 handing it down to the others, but you know the person at

1 the bottom of the line in that naive mentality is thinking,
2 well, as long as I'm not the one up there getting them, I'm
3 not in it. And that's naive, okay? But that's just the
4 mentality of who you are dealing with. Okay?

5 Somebody ties you up, treats you roughly,
6 turns you around, ties your thumbs together, you are going
7 to get a good look at them and you are going to remember.
8 If somebody pulls out a gun and puts it in your face or
9 holds it in the air, you are going to remember. If somebody
10 pushes you, shoves you, cusses you, does something
11 confrontational like that, you are going to remember it.

12 Now, Wes said at one point Rivas was walking
13 him around and there was somebody up in the front of the
14 store and the guy kind of hurried up and walked off the
15 other way. And Randy Halprin told you that when Rivas
16 walked up there with Wes, he turned his head. That's
17 consistent. That's consistent with the guy who is not doing
18 anything confrontational. That's why nobody can identify
19 him as even being there.

20 Now, consistent with that is going to be not
21 pulling your weapon. May sound stupid. He had it. He
22 never pulled it out. He never confronted anybody. What did
23 he do? He put on a shirt, went up to the front with the
24 broom, acting like he was doing something. Everybody can't
25 may be the shooter on the basketball team. Everybody can't

1 be the pitcher on the baseball team. Everybody can't be the
2 lead attorney in a big case. Everybody has a role. You
3 kind of wonder, why do they have this guy? Because they
4 need this kind of guy. They need a gofer guy. They need a
5 guy just to do the dumb stuff. And it's consistent with
6 everything that you have heard.

7 Mr. King says, you know, the State hasn't
8 proved to you beyond a reasonable doubt Randy Halprin fired
9 a shot and I agree with him one hundred percent. You know,
10 what's the evidence that they have? Well, you have got
11 Detective Spivey saying, well, I think he did. Why do you
12 think he did? Because they said so in the statement.

13 You don't realize until you really listen and
14 absorb all this evidence and think about this evidence, why
15 they're saying that. They are not saying that because
16 anybody is saying, I saw him pull it out. They're not
17 saying that because they say, I saw his arm raised. They
18 are saying that because they think he's the kind of buffoon
19 that's going to get all nervous and pull out his gun and
20 shoot himself in the foot and shoot one of them. That's why
21 they are saying that and that's the only reason they're
22 saying that. And that's consistent with everything that you
23 heard.

24 I told you in opening statement he's kind of
25 like Rivas' little brother. He told you that. You know,

1 you may wonder why they have him along. But that's
2 consistent. In their statements they called him Junior.
3 Mr. King said that Murphy said they thought he shot Rivas.
4 If you read it, what Murphy said was, we thought he shot one
5 of our buddies. That's making Murphy and whoever he's
6 including as we, thinking that Halprin has shot one of their
7 buddies, which is everybody else. That's excluding Halprin
8 from the equation. The only reason they think he shot
9 somebody is because that's what they think about him.

10 And with that exhibit Mr. King just showed
11 you, you see how that's inconsistent? If he had one of
12 those big ole revolvers, .357s out there at the scene, he
13 shot hisself in the foot, he wouldn't have a toe now. The
14 entry wound is from the side, consistent with somebody else
15 shooting. It's consistent, folks. It's consistent with who
16 he is.

17 Do you think he's smart enough, you know, they
18 want him to be smart and manipulative on one hand, but then
19 Mr. Wirskye tells you he admits that he's a dumb criminal on
20 the other hand. Do you think he's smart enough to
21 manipulate Detective Spivey? Do you think he's going to sit
22 there and, you know, decide what to put in his statement and
23 whatnot?

24 As I recall, the first day Detective Spivey
25 testified, Mr. King got him up there and they went through

1 that statement line by line. And everything in that
2 statement was consistent. There was nothing in there that
3 was self-serving. Do you think he's that smart?

4 What do they tell you when he came out? He
5 came out of the RV, he came out without incident, he came
6 out unarmed, and he came out afraid. That's consistent with
7 everything that you have heard. He's not a part of the red
8 team. He's not a part of the blue team. He's not
9 ex-military, he doesn't know anything about military
10 operations. He told you he's not a gun person. They've
11 never had guns in their family.

12 It's all consistent, folks. They have not
13 proved the main thing that they want to prove to you beyond
14 a reasonable doubt. They want you to look at dowel rods,
15 they want you to look at guns, they want you to look at
16 exhibit, upon exhibit, upon exhibit, they want you to feast
17 on words like "evil" and "pathological" and not look at the
18 facts.

19 Sixteen, sixteen people taken down in that
20 escape. We're not saying it didn't happen. We never did.
21 We're not saying people weren't roughed up. We never did.
22 Okay. But once again, sixteen people had an opportunity to
23 give statements.

24 Marroquin tells you at worst Randy Halprin
25 roughed up Mr. Camber. Then you know at Garcia's trial he

1 said that was Garcia, so I don't know how much weight you
2 can give that. So where does that leave you? At worst he
3 cussed and threatened somebody. At worst. I'm not excusing
4 that, not minimizing that. Okay?

5 But for comparison purposes, is he different
6 than the rest of those guys? Sure. Sixteen people. Now,
7 you know if anybody else heard him make a threat, if he beat
8 up anybody else, if he had been one of the ones with the
9 shank, threatening people, you know, you would have heard
10 from him. So that's consistent, folks, that he is different
11 from them.

12 I agree if you had seven rattle snakes down
13 there, you couldn't pick which one was not dangerous. But
14 if you had six rattle snakes and a garden snake, then you
15 could. Everything that you heard in this case is consistent
16 with the fact that he's not like them. He is on a different
17 level than these ex-military men, this trained Navy seal,
18 who repeatedly confronts people and handles the situation.

19 What evidence does he have that something like
20 this won't happen? Because he's got evidence, folks.
21 First, he's got this breakout. Now, this was amazing. It
22 was planned. Wasn't planned by him. You know that. You
23 know he's not capable of that from what Moczygemba and the
24 other people have told you about his leadership, about his
25 mental ability. But, yeah, it was planned. It probably

1 impressed him a whole lot. And because of the planning, it
2 was effectuated very well. It was done without anyone
3 getting killed, without anybody getting lifethreatening
4 injuries.

5 Not only did they have to get the people in
6 that particular area, but Rivas and whoever else had to go
7 to the tower, you know, where guys have got guns, where
8 their soul purpose is to shoot people who are trying to
9 escape, you know. They took those guys down, so they took
10 their guns and they could have shot them right there, I
11 assume. They didn't do that. They got out. You know,
12 that's evidence to him. That's something he can look at
13 directly and say, well, this didn't work -- I mean, this
14 worked. Nobody got hurt.

15 One of the witnesses told you, I believe it
16 was Mr. Burgess, somebody came up on them that they didn't
17 expect, one of these people they didn't expect to be there.
18 They were taken down and they weren't hurt.

19 They do the Auto Zone robbery to get cash.
20 They do the Radio Shack robbery to get the radios, the
21 scanners. Nobody is hurt. Nobody is killed. He knows
22 Rivas has done 17 aggravated robberies.

23 Now, aggravated, folks, means a weapon was
24 used. It's an aggravated robbery. That's evidence to him.
25 He's heard Rivas talk about how he planned them and what

1 happened with them. But they're not attempted murders.
2 They are not murders. They are not capital murders. That's
3 evidence to him that, although he might get caught, he's
4 really successful in doing these without somebody getting
5 hurt.

6 And the planning that went into this one was
7 planned the same way. The only intent to confront the
8 police is you have scanners to hear where they are. You
9 don't intend anybody in the store to get hurt, if part of
10 the planning is waiting until the traffic has died down,
11 until everybody is out of there. You don't plan for anybody
12 to get hurt if you can get everybody rounded up together and
13 so there's no loose ends and everybody is within a small
14 area that can be controlled. That's part of the plan to
15 keep everybody from getting hurt.

16 And that's why you have a security guard
17 uniform and the fake photo IDs and all that. The planning.
18 The car, you have got an escape route. Everything is
19 planned. And that's evidence to him that this could work,
20 because it's worked so many times before.

21 I'm not excusing all of that. I'm not saying
22 this is a good thing. Everybody should go out and do this,
23 you know? I'm just saying what's in his mind that you have
24 to look at when you consider whether or not he anticipated
25 something like this would happen.

1 I told you on opening statement and I think
2 it's been shown that what happened outside, the shooting of
3 Officer Hawkins, was probably the only thing that wasn't
4 planned for. I mean, you can see just what a big mess that
5 was out there. The officer getting shot, them shooting
6 Randy, shooting Rivas, Harper shooting up into the trailer,
7 shooting through a window, that was all just a big frenzy.

8 But when you look at what he had to, what
9 evidence he had in making his decision as to whether
10 something like this would happen, he had a lot to look at.
11 George Rivas, a master plan.

12 There's a lot of stuff. There's a lot of
13 exhibits. There's pictures of the exhibits. There's
14 charts. There's diagrams. Most of that goes to what we've
15 already admitted in this case. Most of that goes to what
16 you already said you knew about this case before you even
17 walked in here.

18 The main issues, the issues that the State
19 needs to prove this case beyond a reasonable doubt, they
20 just haven't done it, folks. As Mr. King says, they want
21 you to look at all of this and all the rest of it that's
22 back there. They want you to hear inflammatory terms like
23 "evil" and "diabolical" and "pathological" and then they
24 want you to just ride that into a capital murder conviction.

25 And that's what you said that you had the

1 mental discipline not to do. I'm going to remind you of
2 that and I'm going to ask you to exercise that mental
3 discipline. It may not be fun. It may not be popular. It
4 may not be what they want. But in a court of law, it is the
5 right thing to do. Thank you.

6 THE COURT: Members of the jury,
7 Mr. Shook has 30 more minutes on his argument. Can you hold
8 out 30 more minutes? Mr. Shook.

9 MR. SHOOK: May it please the Court?
10 Members of the jury, I want to answer a few things that the
11 defense counsel has brought up and leave you with a few
12 thoughts of my own and then let you make your decision.

13 I want to talk a little bit about the law.
14 The Judge read very carefully the Court's charge to you.
15 You will never, ever get to the lesser included offense of
16 aggravated robbery. He's guilty of it, yes. He's guilty of
17 a lot of things.

18 But the Court's instructions are quite clear.
19 You must first consider the charges of capital murder. If
20 you do not believe the State of Texas has proven this case
21 beyond a reasonable doubt under all three theories, then you
22 would acquit him and move on. You will never get that far,
23 folks.

24 We went over the different theories. We can
25 prove him as a principle, a party, or as a co-conspirator.

1 And, in fact, under the law you don't have to agree, the
2 twelve of you, on which theory to convict him of. Four of
3 you might think we have proven him as a principle; four
4 might think we may have proven it as party; and four of you
5 might think, well, they have proven him as a co-conspirator,
6 and you can all find him guilty, a unanimous verdict.

7 Or you might all think, you know what?
8 They've proven him all three ways, because that's how strong
9 the evidence is in this case. So you will never get to the
10 lesser included, because this is an overwhelming case.

11 And we didn't present all this evidence for
12 effect. I would hope as twelve citizens of this county, you
13 would require and want the prosecutors to give you the full
14 picture and talk about that. This isn't for effect. This
15 is the evidence in this case.

16 And let me talk about one thing Mr. Ashford
17 brought up. You heard a lot of evidence. George Rivas,
18 there is not one witness, not one piece of evidence that
19 said he was a Navy Seal. He was never a Navy Seal. I don't
20 know where he got that from. There's absolutely no evidence
21 of that.

22 The only evidence was that Mr. Harper had some
23 interest in the military, National Guard. Mr. Murphy may
24 have done some military time. But there's no evidence that
25 George Rivas was any Navy Seal or in the military in any way

1 whatsoever.

2 Now, the State of Texas with this evidence, I
3 submit to you, has proven this case all three ways. You can
4 believe from the evidence and reasonable deduction from the
5 evidence, that he is a principle. You see, we don't have an
6 eyewitness. We have to use circumstantial evidence.
7 Circumstantial evidence is any evidence other than an
8 eyewitness that can connect the defendant to a crime. The
9 law does not reward the criminal when they murder the
10 eyewitness. He can still be held accountable.

11 What you do is you bring in every other piece
12 of evidence that connects him to the crime and you as jurors
13 can make what is called reasonable deductions from the
14 evidence. And all that is, is common sense, your most
15 valuable tool, your most valuable weapon as a juror, your
16 common sense.

17 And using your common sense in all this
18 evidence, yes, the State has proven this case in all three
19 ways.

20 We know that Randy Halprin was along in this
21 gang. That by his own admission, he had a loaded gun and
22 that tells you all you need to know about his intent. You
23 know that he was in that store. And we've talked about Wes
24 Ferris. Wes Ferris with very clear in his statement that
25 night when this robbery happened. He didn't know the exact

1 amount. He said in his written statement six to eight men,
2 but basically what he told you is everyone he saw had a gun
3 out. That makes perfect sense.

4 He was in that store and was actively
5 participating in that robbery and he was out back when
6 Officer Hawkins was coming and he knew Officer Hawkins was
7 coming around. He had been informed of that by the lookout,
8 Patrick Murphy. And he was back there close enough, just
9 like George Rivas was close enough, to get hit in the cross
10 fire.

11 And you also know that from what Mr.
12 Halprin has told us, even on his own, because I had him draw
13 this diagram out. By his own testimony he puts himself,
14 Joseph Garcia, Michael Rodriguez, and Larry Harper out here,
15 puts George Rivas at this front. But he puts everyone on
16 this side of the car.

17 In his confession it was a little different.
18 In his confession he put George Rivas out front with himself
19 and Michael Rodriguez and Larry Harper. He put Donald
20 Newbury and Joseph Garcia inside. And he said when the
21 shooting began, he thinks Larry Harper did some shooting and
22 he ran in to get Donald Newbury and Joseph Garcia. And they
23 came out and then there was more shooting. But, again, he
24 puts everyone on this side of the car.

25 And then he told us, I ran this way when the

1 shooting started. This way. And I didn't lead him in that.
2 I wanted him to tell us where he went. I asked him, did you
3 go this way? No. I didn't go this way. He went this way
4 or down this way. Went out to that embankment as he called
5 it.

6 So he is the only one, by his own admission,
7 that puts himself on the passenger side of that car. And we
8 know from looking at the photos, that there are four bullets
9 going in on that side of the car, coming from that side of
10 the vehicle. You can look at these diagrams and you can see
11 the angles. All going in this way. One makes it all the
12 way through. One hits the police scanner. They are coming
13 in from this side of the vehicle. And by his own testimony,
14 he is the only person that puts himself on that side of the
15 car.

16 Now, we know it's not Michael Rodriguez,
17 because everyone seems to agree that Michael Rodriguez
18 dropped this gun and it was only fired once, and that bullet
19 went right in behind the speedometer. He obviously wanted
20 to kill Officer Hawkins. And he dropped the gun.

21 Donald Newbury by Mr. Halprin's statement and
22 his own, he's the one that apparently fired, fired in that
23 trailer. That's three shots. So he couldn't have fired
24 those four shots originating from that side. These guns
25 only hold six bullets.

1 George Rivas apparently fired from the side at
2 some point in time. By his own admissions he's over there.
3 Now, did one of those shots hit Officer Hawkins? I don't
4 know, because the medical examiner told you he just takes
5 out the bullet fragments. The firearms examiner said these
6 ones that don't have the bullet cores, are
7 through-and-through shots, he can't match them to anything.

8 Mr. King said, well, the medical examiner said
9 only two weapons were used in shooting Officer Hawkins. No,
10 he could only identify two. There are a lot of bullets,
11 such as the one that goes to his heart, that's a lead core.
12 They don't know which gun that went to. This one is a
13 through-and-through shot. They don't know which gun that
14 went to. This is a through-and-through shot here. They
15 don't know which gun that went to. A few they could. That
16 doesn't mean that only two guns were used to hit Officer
17 Hawkins. We know a minimum of five and it could have been
18 more.

19 But Randy Halprin by his own admission puts
20 himself on the side of that car where four shots come. So
21 his intent is clear. Maybe it was one of these shots. I
22 don't know, because Officer Hawkins can't come in and tell
23 us.

24 The evidence back there puts you, using your
25 common sense that he can be one of the principles. But that

1 doesn't matter, because, you remember, they spent most of
2 their time, most of the their argument that the State of
3 Texas didn't proof he's the actual gunman. But you will
4 remember the majority of our voir dire time we talked about
5 the law of parties with each and every one of you, because
6 we knew the state of the evidence. And that a person could
7 be held just as accountable for capital murder as a party as
8 he would be a principle.

9 And we gave examples of that and each and
10 every one of you agreed with it. From people actively
11 participating in these offenses where groups of individuals
12 commit crimes. And they all must be held responsible.

13 We can prove him a party. He's there. From
14 the escape he knows there's going to be robberies when they
15 get out. He gets and makes himself a part of this group, an
16 outlaw gang. He actively participates in that breakout. He
17 commits two -- he's with them -- he admits to at least maybe
18 one robbery with them and he knows they're committing
19 another.

20 These are murderers, rapists, and robbers he's
21 with. He knows their disposition. They're violent men.
22 And he goes to the Oshman's. He's a big part of that plan
23 because we know by his own admission he's the one that goes
24 in to get the layout of the store. And he's just as
25 actively involved as the others.

1 And he's back there in the back and they are
2 ready. They have -- they have planned for every possible
3 alternative that could come up. That's why they had the
4 scanner out there, because they know the police may come.
5 That's why they're in constant radio communication. That's
6 why they have the escape car, because they planned every
7 possible alternative that could come up.

8 And what do we know? We know that they all
9 know Officer Hawkins has arrived and he's coming around to
10 the back and they are waiting. And it's like precision.
11 It's not a panic out there. I didn't say they are accurate
12 shooters, but they all began shooting Officer Hawkins,
13 because he's caught in an ambush.

14 And they get out of there within 47 seconds,
15 because they know exactly what they are doing. They load up
16 their loot, they get Officer Hawkins out of the way, they
17 run over him, and they are gone.

18 And you remember how Mr. Washington told you
19 how they drove off in a slow steady manner? That shows it
20 was no panic. They didn't just fly out of there. They
21 didn't want to attract attention. This was after the
22 shootout.

23 And what else let's you know they weren't in a
24 panic out there? They murder Officer Hawkins, they drive
25 over him, but they take his gun. Why do you think they took

1 this? The 44 weapons they stole, was that not enough? No,
2 they wanted a trophy. They wanted a trophy. They liked
3 doing this sort of thing, makes them proud. That's why they
4 write -- Randy Halprin writes letters like this, this
5 taunting letter he left behind in his cell, "Believe me.
6 You haven't heard the last of us."

7 He was so right. This is the man they say was
8 so naive, he didn't know what was going to happen. He's
9 predicting something bad is going to happen with this note.

10 And then, of course, you have the law with the
11 co-conspirators. If people agree to commit a robbery, do
12 the facts show that they should have anticipated someone
13 might die. It can't be clearer than this.

14 You can go all the way back to his
15 disposition. First of all, we know he's a very violent
16 disposition and these are the people he chooses to work with
17 now.

18 Now, no, he didn't have a violent record in
19 the pen. That's how he manipulated his way into a position
20 that he can get in a car and escape, just like the rest of
21 these men did. They can't work in that maintenance
22 department if they have been spitting on guards and
23 assaulting guards.

24 See, they watch and they bided their time for
25 their opportunity. Now, they are all violent men,

1 obviously, but they positioned themselves in the pen. And
2 they get together and they plan this thing for several
3 months. And Randy Halprin would have you believe by the way
4 he testifies that he didn't think anyone was going to get
5 hurt and this was kind of they just kind of got out.

6 Common sense will tell you this, folks, they
7 are only going to take people they can depend on. They are
8 only going to take people they could trust. He wasn't
9 brought along as a mascot. He was brought along because he
10 was their friend and they knew they could depend on him.

11 And they act as a team. That's what this
12 whole thing is, is a team. They are very efficient when
13 they break out of that prison. They are taking people down
14 one by one. And Mr. Burgess gets on the stand and he tells
15 you Randy Halprin is the one that lured him in the back,
16 look at this motor, look at this motor, and then he gets
17 hit. And it's Randy Halprin that's making the death threat
18 back there to him and he means it, when he's tied up,
19 trussed up. Tells him what he thinks of him.

20 And it's Randy Halprin that is actively
21 participating in this with violent men and he can see by his
22 own eyes that people are being threatened. And don't you
23 think for a minute if someone was going to prevent them, if
24 they would have thought one of those craftsmen was about to
25 actually stop them, they wouldn't hesitate to murder them?

1 What do you think Donald Newbury was trying to
2 do when he saw that everyone was getting loose and they had
3 that big battle with the door and he had the shank out
4 swinging it around? Do you think that he was going in there
5 just to settle everyone down or do you think he was going
6 back there to try to kill somebody? But, thank goodness, he
7 didn't get back there and they fought him off.

8 But he knew very well the type of people he
9 was dealing with. And they knew from the beginning, back
10 when they were in prison, that they were going to break out
11 and go on this string of robberies.

12 Now, how can you sit there with a straight
13 face and say, I didn't know violence would happen when you
14 are going to commit those types of crimes? When you get
15 with violent men, you form a gang, and you know they are
16 going to take loaded weapons and put them in the faces of
17 honest, hardworking citizens, and you don't anticipate some
18 violence may not happen? That doesn't make sense, folks,
19 just because no one got murdered in George Rivas' other
20 robbery.

21 You talk about him being the big planner, I
22 submit to you, folks, he's no criminal genius. If he was,
23 he wouldn't be in the penitentiary. There's a reason he's
24 serving 17 life sentences. This plan, Oshman's plan, was
25 destined to fail. They can plan all they want.

1 But when you are going to take down 17 people
2 on Christmas Eve, one night you know the families are
3 expecting them to be home, they may have plans going to pick
4 them up. I mean, it was ludicrous to think they were going
5 to get away with something for half an hour and someone
6 wasn't going to take notice that something bad was going to
7 happen.

8 And he knows the plan. He knows that they are
9 all going to go in with loaded weapons. Why are you going
10 in with loaded guns? It's a common sense thing. Most of
11 you brought it up on your own when you talk about what would
12 be important to you under the law of parties and
13 co-conspirators. Because you are anticipating using them.
14 He even admits in his statement that some of them brought
15 extra ammunition. Why would you want extra ammunition?
16 Because it's obvious. It was your plan you were going to
17 use it and you would need more.

18 Now, his explanation on the stand was, well,
19 maybe they wanted it for target practice or something like
20 that. You can't get away from that, folks. It's common
21 sense stuff.

22 And then you go in and you are planning and
23 you know the police patrol that area. They made note of
24 that. And they have a guy with a scanner out there and he's
25 got an AR-15, which I think he characterizes as a sniper.

1 And even Patrick Murphy said in this statement, once I
2 rendezvoused, I got in the back to initiate a fire fight
3 with pursuing police.

4 Randy Halprin, he didn't remember that. He
5 must have missed that meeting when they talked about that,
6 although he admits being in on the plan.

7 And then Randy Halprin in the way that he's
8 described by defense counsel, he's just this reluctant
9 buffoon that's there. Don't believe that for a second.
10 He's just as valuable a member of his team as anyone else.

11 You know, the way Randy Halprin described his
12 behavior is, I didn't want to do these robberies. I just
13 wanted to get out. I was always objecting to it. They had
14 to keep someone to watch him. He wouldn't come out and say
15 he was a hostage, but they always had to keep Rodriguez,
16 they were always afraid I would drive off, that sort of
17 thing. Don't believe that, folks. That doesn't make any
18 sense.

19 Why would they bring someone along that they
20 had to keep watch on? Why would you bring him -- if you
21 didn't trust him, why would you even bring him to this
22 Oshman's robbery? They could trust him as much as anyone
23 else. He was as big a member of the team as anyone else out
24 there.

25 Let's talk a minute about Randy Halprin. You

1 did get a unique glimpse in the mind of a criminal. You
2 will never understand him. You folks have a conscience.
3 You obey the law. You go about and work, raise your
4 families. Randy Halprin doesn't think like you. You will
5 never understand the way he thinks, the way his mind
6 operates.

7 I don't think he even realized some of the
8 things he said, because he thinks so alien, you know.
9 Remorse, being held responsible for things, those don't
10 enter his mind.

11 When you ask him about have you stopped lying,
12 that's not a law school trick, folks. But his response is
13 amazing. Well, you are just going to have to give me an
14 example. You know, everyone lies. He thinks everyone lies.
15 He thinks everyone thinks like him. You are just going to
16 have to give me an example.

17 Or another example of that would be when he
18 said, you know, I usually got in trouble in my past because
19 I'm impulsive, but George Rivas told me about his escape
20 plans, I thought about it for a few days. Then I decided to
21 join. He wanted some credit for that, I think, that he
22 thought about it before he committed a first-degree felony.

23 And you know he has no remorse. And he agreed
24 in a plea bargain to 30 years and he wanted out. And in
25 that twisted logic of, well, 15 years from now I don't think

1 they would parole me, so I had to get out. I needed a
2 little bit of punishment for what I did, but, you know.

3 They want to portray him as this bumbling
4 buffoon, but parts of his letters were read. I think that
5 you can realize from that, that he's no idiot. He's no
6 bumbling buffoon. He's a manipulative, pathological liar.

7 Mr. King characterized his adoptive parents
8 as, well, you were a few problems. We will ship you off and
9 we won't want to hear about you anymore. That's why I read
10 that one letter, almost all of it that he had written to his
11 parents, where he gave you the story of what happened to
12 that family. "You gave me chance, after chance, after
13 chance. You dug me out of hole, after hole. But I have
14 constantly lied and manipulated. I left home because you
15 would never let me get away from anything. I have been a
16 pathological liar."

17 And you can understand why they finally cut
18 him off. There obviously had been a very long history of
19 lying and manipulation on his part. Of course, that's why
20 he fits in so well with these guys. And finally they had to
21 cut him off. They didn't just abandon him. They didn't
22 shove him off. He had a long history of chances. But he
23 always stole from people he knew, he lied to them, he conned
24 them, he manipulated them. He told you, he admitted himself
25 that he's been successful at manipulating people.

1 And this whole act he had on the stand was a
2 further attempt of his manipulation. I'm meek. I'm mild.
3 I'm Randy. I didn't want anything bad to happen. I just
4 wanted to go away to Seattle. Of course, it contradicts the
5 bold faced evidence of, you haven't heard the last of us.

6 Anytime you confront him with a lie he can't
7 get out of, it's just you took that out of context, that's
8 all. You know, he went to great lengths with reporters.
9 You know, he interviewed with reporters. "I want TDC to
10 produce that letter because I never said that."

11 Remember the other letter that he wrote to the
12 friend? "I like George Rivas and I like Larry Harper and
13 Garcia. I didn't like the other guys. They were trash.
14 One of those idiots wrote a letter that said, 'You haven't
15 heard the last of us,' like we are looking for revenge. Can
16 you imagine that?"

17 When you catch him in that lie and say, you
18 know, I just forgot about that part of the letter. That's
19 what that was. He's one of these people that you can tell
20 he's lying. It's an old joke. You can tell he's lying
21 because when he speaks, if his lips are moving, you know
22 Randy Halprin is lying. You can't trust a thing he says.

23 And this -- Mr. King talked about this was
24 just a one-time episode when he's 18. Well, he's almost 19.
25 You can ask him, one week later after he's arrested, he

1 turns 19. This episode with the child.

2 His confession, he doesn't have he's on acid.
3 A very detailed confession. But now, it's, well, that was
4 my drug years. I was on acid at the time. That was his
5 excuse for it.

6 And then you heard from Dr. Megehee who said,
7 no, in his opinion those are burns to the mouth. Of course,
8 Mr. Halprin doesn't want to admit to that because he can't
9 blame that on an episode. That's very calculating to take a
10 match or cigarette and burn a child's tongue inside of his
11 mouth.

12 The doctor didn't say, oh, well, maybe it was
13 ulcers. Mr. King asked him could that be an explanation,
14 are ulcers also caused by malnutrition? And he said, yes.
15 But he seemed quite clear in his opinion those were burns,
16 cigarette burns. And he has seen this type of thing a lot.
17 It's very a calculating, cruel, evil mind on the part of
18 Randy Halprin.

19 And then there's explanation that, well, the
20 gun fell down. The gun fell down his pants. He said he was
21 just wearing regular bluejeans. This is a pretty big gun.
22 I don't know how that's going to slip down your pants legs,
23 folks. He wasn't wearing trousers or slacks. He was
24 wearing bluejeans.

25 Now, we heard all these confessions read. Not

1 a one of them really admits to shooting Officer Hawkins,
2 except George Rivas. And his explanation was a complete lie
3 that he was aiming at his bulletproof vest, shot him twice,
4 and then pulled the trigger three more times, but didn't
5 know whether he hit him or not. None of these guys wants to
6 take responsibility. They all lie through their statements.
7 They all shift blame, just like Randy Halprin. They all
8 want too minimize their roles.

9 And if you take the defense arguments about
10 why Randy Halprin shouldn't be found guilty of capital
11 murder, they apply to each and every one of those
12 individuals. And under their theory, how they view the
13 evidence, not a one of them, including George Rivas, would
14 be guilty of capital murder.

15 Now, Randy Halprin made some choices. He's
16 made choices his whole life. They are usually bad choices,
17 usually go down a wicked path. He made a choice to lie and
18 manipulate his parents his entire life. He's made choices
19 to steal by his own admissions from his closest friends and
20 to play on people as he said.

21 He made choices back in 1996 to assault this
22 child, to hurt him, to break his arms and his legs, fracture
23 his skull. The assault that didn't stop in just one moment,
24 one slap. The child tried to get away from him, called for
25 his mother.

1 He made a choice to plead guilty, take 30
2 years. And then he didn't like it down there in prison.
3 You notice the letter didn't say he had been abused or
4 anything. In fact, it says, you know, his prison sentence
5 had been somewhat comfortable, had a comfortable prison
6 life. "Content? Yes. Happy, no." He just didn't want to
7 be in there any more, folks, because he doesn't take
8 responsibility for his crimes.

9 So he made a choice to join this band of
10 criminals, these outlaws. And he participated with them as
11 much as anyone else. And he threatened and they beat
12 people. He threatened craftsmen in that prison. And they
13 were going to do anything, including murder people, if they
14 had to, to get out of there.

15 And they got out and he knew what the plan was
16 all along. And he had choices and he went along with them
17 on these robberies, knowing what they were going to do,
18 knowing what they were going after with these guns. And he
19 told us all about his intent. Even when he's captured, in
20 the pack where his five grand is located and his, "sick to
21 the end", it's very clear, folks. You can read it. "Sick
22 to the end," not "stick to the Lord". Is a gun, a loaded
23 gun. And that tells y'all about his intent.

24 Maybe that's the one time he was telling the
25 truth. He's sick to the end. But he's made choices out

1 there and during that Oshman's robbery he knew and his own
2 confession says it, a police officer was out front. And he
3 could have run out that back door. He could have just given
4 up, I guess, and stayed inside. He could have run out the
5 front door. He could have run across that field.

6 But he didn't. He stayed out in that back
7 loading dock area. And when Officer Hawkins drove up to the
8 back, he could have left then. He didn't have to stand
9 there. He could have run as fast as he could to get away,
10 because you know anyone out there knew something real bad
11 was about to happen.

12 You have got seven ex-convicts on the run with
13 weapons, all convicted of violent crimes, you know something
14 bad is about to happen. They are not going to trick Officer
15 Hawkins. He's the one man standing between them and
16 freedom. He's the one man standing between them and their
17 money and their guns. And they weren't about to let him get
18 in the way.

19 And he made a choice to stay there. Officer
20 Hawkins didn't have a chance, because he didn't know he was
21 coming in an ambush. He drove up there and they all acted
22 as a team, just like they had been for the last month.
23 Acted as a team and they swarmed all over him.

24 And we know that Aubrey Hawkins knew what was
25 about to happen to him, because this arm was up. Common

1 sense will tell you that, in a defense posture. He was
2 trying to block some shots coming in at him. So he was
3 conscious. And his last thought, his last vision, was of
4 this man and his friends swarming on him in a murderous
5 fury. And he was outnumbered and they had the jump on him
6 and he died. He died alone in that cold pavement. Maybe he
7 had some final thoughts. Maybe he thought of his family
8 that he had just left. I hope he did.

9 Randy Halprin must be held accountable for his
10 crime, which is capital murder. On Christmas Eve most men,
11 most fathers are home. They have dinner with their family.
12 Maybe after dinner they sit down and they read a traditional
13 Christmas story to their children. After their children are
14 put to bed, perhaps they build their little boy's bicycle or
15 other toys.

16 But Aubrey Hawkins couldn't do that because he
17 was on duty. He was out there guarding me. He was out
18 there guarding you. And he answered his call. And they had
19 the drop on him that day.

20 But they have been captured and they have been
21 brought back. And he's going to be held accountable.
22 There's only one crime he is guilty of and there's
23 overwhelming evidence and that's guilty of capital murder.
24 We'll ask you for that verdict. Thank you.

25 THE COURT: Members of the jury, if you

1 will retire and consider your verdict.

2 [At this time the jury retired to
3 deliberate their verdict.]

4 MR. KING: May we approach the bench?

5 THE COURT: Uh-huh.

6 (Bench conference)

7 THE COURT: Let the record reflect the
8 jury has been retired at 10:48. Thank you. You may be
9 seated.

10 Do I have a motion to discharge the alternate
11 jurors?

12 MR. KING: So move, Your Honor.

13 MR. SHOOK: No objections.

14 THE COURT: Sheriff, discharge those
15 jurors. And we shall wait.

16 [Recess]

17 [Jury in]

18 THE COURT: Thank you. You may be
19 seated. Mr. Halprin, if you will remain standing. Let the
20 record reflect the jury indicated they reached a verdict at
21 approximately 12:50.

22 Mr. French, are you the foreman?

23 THE FOREMAN: Yes, sir.

24 THE COURT: Has your jury reached a
25 verdict?

1 THE FOREMAN: Yes, Your Honor, we have.

2 THE COURT: Would you please read your
3 verdict to the Court.

4 THE FOREMAN: "We, the jury, find the
5 defendant guilty of capital murder as charged in the
6 indictment."

7 THE COURT: Members of the jury, if
8 that's each and every one's individual verdict, would you
9 please signify by raising your right hand? We have a
10 unanimous verdict. Do you wish to have the jury polled?

11 MR. ASHFORD: No, Your Honor.

12 THE COURT: Thank you. You may be
13 seated. Members of the jury, you know as a result of the
14 verdict that you have now reached and returned to this
15 Court, the Court will now begin the punishment phase of this
16 trial.

17 If you would, go with the Sheriff for a brief
18 recess and we'll be back and start the evidence in a few
19 minutes.

20 [Jury out]

21 THE COURT: Thank you. You may be
22 seated, Mr. King?

23 MR. KING: Your Honor, we request a
24 hearing on any extraneous offenses the State intends to
25 offer. We wish to have a hearing outside the presence of

1 the jury on those to determine their admissibility.

2 THE COURT: Yes, sir.

3 MR. SHOOK: Judge, the only witnesses
4 that we have today are going to go into the child abuse
5 case. Do you want a hearing on those? It's already --

6 MR. KING: Unless they are going to bring
7 some additional bad act or something else, I'm not sure the
8 extent of that.

9 MR. SHOOK: It's just going to cover the
10 incident. It's -- one of them is the sergeant who took the
11 confession and then the CPS investigator.

12 MR. KING: All right.

13 THE COURT: Two witnesses this is
14 afternoon; is that correct?

15 MR. SHOOK: Yes, Your Honor.

16 [Recess]

17 MR. KING: We would also reinvoke the
18 rule, Your Honor.

19 [Jury in]

20 THE COURT: Thank you. You may be
21 seated.

22 MR. SHOOK: I have two witnesses at this
23 time.

24 THE COURT: Come forward and let me swear
25 you in.

1 [At this time the witnesses
2 present were sworn by the Court.]

3 THE COURT: Who will the State call
4 first?

5 MR. SHOOK: Susan Wagner.

6 THE COURT: You may wait outside and
7 don't discuss this case until you are called to testify.
8 Ma'am, have a seat on the stand.

9 SUSAN WAGNER,
10 having been duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. SHOOK:

14 Q. Would you tell us your name, please.

15 A. My name is Susan Wagner.

16 Q. How are you employed?

17 A. I work for the Texas Department of Protective
18 and Regulatory Services and that would be the Child
19 Protective Services Agency underneath that.

20 Q. What division are you assigned?

21 A. I'm currently assigned to our placement
22 program.

23 Q. How long have you been with them?

24 A. With the agency I've been there 13 and a half
25 years.

1 Q. And let me turn your attention back to 1996.
2 What division were you assigned at that time?

3 A. At that time I was in a unit where I was an
4 investigator housed with the Ft. Worth Police Department.

5 Q. Do you have any special training for your
6 duties as an investigator with CPS?

7 A. Yes. I was an investigator with the agency
8 for ten years and at the beginning, of course, coming to the
9 agency, you go through normal new worker training. But then
10 I went to a lot of specialized training because of the types
11 of cases that I did, dealing with a lot of physical abuse
12 and sexual abuse injuries.

13 Q. And could you tell the jury what your duties
14 were when you were acting as an investigator?

15 A. Well, my job would be to receive referrals and
16 then go out and conduct an investigation which, of course,
17 would entail interviewing and different parties, examining
18 injuries, things like that.

19 Q. Let me turn your attention to August of 1996
20 and ask if you went out to Cooks Children's Hospital --
21 well, actually either the late evening hours or the early
22 morning hours of the 28th of August?

23 A. Yes, I did. I actually arrived in the morning
24 of the 29th shortly after midnight.

25 Q. Okay. What was your reason for going to the

1 hospital that -- in those early morning hours?

2 A. I was contacted after a referral had been
3 received by both CPS and by the police, regarding injuries
4 to a child named Jerrod Smith.

5 Q. And when you arrived at the hospital, what was
6 going on at that time?

7 A. When I arrived Jerrod was still being examined
8 and monitored. His grandparents were there and I spoke with
9 them and the doctor.

10 Q. Okay. Now, when you were called out to scenes
11 like a hospital, do you work hand in hand with the police
12 detective that is working on the case, also?

13 A. Yes. Because of the specialized unit that I
14 was in, we actually teamed investigations together. So I
15 did work -- the detective and the sergeant were both on the
16 scene and we all worked together on the case.

17 Q. And what police officers were involved in this
18 particular case?

19 A. Well, I don't recall which patrol officer was
20 there, but the detective that I was working the case with
21 was Detective Camper.

22 Q. And now you said that the child was still
23 there and was he being treated at the time?

24 A. Yes.

25 Q. And you spoke with his grandparents who were

1 there at the hospital?

2 A. Yes, I did.

3 Q. And you also spoke with the doctors?

4 A. Yes.

5 Q. Did you -- but you had a chance to observe
6 Jerrod Smith?

7 A. Yes, I did. I observed him and took some
8 pictures.

9 Q. All right. And let me show you what's been
10 already entered into evidence as State Exhibit 945 and 942
11 and 947 and 941 and 944, 943, 946. Are those all photos of
12 Jerrod Smith and the types of injuries that you observed at
13 that time?

14 A. Yes.

15 Q. Had the child already gone and had x-rays and
16 was being treated at the time you arrived?

17 A. Yes.

18 Q. Okay. Was he in physical pain that you could
19 observe?

20 A. Well, he appeared to be to me.

21 Q. Okay. And that was something you would expect
22 with these types of injuries, of course?

23 A. Correct.

24 Q. Now, when you get -- you start an
25 investigation like this, who are the persons that you focus

1 in on in trying to determine the cause of the injuries?

2 A. I would look at any caretakers who had access
3 to him.

4 Q. And did you speak with the people that you
5 believed to be the caretakers of him at or near the time
6 these injuries had occurred?

7 A. Yes.

8 Q. And who would that be?

9 A. I spoke -- initially spoke with the mother.
10 Charity Smith, the lady that she lived with at that time,
11 Ramie Plummer. Those were the first two people because they
12 were the first ones that I was able to contact. And then
13 Randy Halprin and then Ramie's husband, Todd Plummer.

14 Q. Okay. Did you determine they had all been
15 living in an apartment together?

16 A. Yes.

17 Q. During the course of your investigation were
18 you able to determine when she had moved there, when all the
19 parties had gotten together and were at the apartment?

20 A. Yes.

21 Q. As part of your investigation, did you put
22 together a timeline for August of 1996?

23 A. Yes, I did.

24 Q. What was your purpose in doing that?

25 A. Well, as an investigative tool, that kind of

1 helps me just put all the facts together that I've been
2 gathering, so I can visually look at it and it would
3 hopefully help guide me through the case.

4 Q. Let me show you State Exhibit 967. The
5 timeline you put together were handwritten notes on a
6 calendar for August of '96 --

7 A. Correct.

8 Q. -- is that right? Does this exhibit reflect
9 the timeline you have put together? It's just that we typed
10 out the handwritten notes so they are legible?

11 A. Yes, sir.

12 Q. Would it help you explain your testimony to
13 the jury?

14 A. Yes.

15 MR. SHOOK: We'll offer State Exhibit
16 967.

17 MR. ASHFORD: No objections, Your Honor.

18 THE COURT: No. 967 shall be admitted.

19 Q. (By Mr.Shook) I'll try to hold the exhibit up
20 and hopefully everyone can see it. We're talking about the
21 events that occurred in August of '96; is that right?

22 A. Correct.

23 Q. Now, you spoke with Charity Smith, as well as
24 Ramie Plummer.

25 A. Yes.

1 Q. Did your investigation, during the course of
2 your investigation also talk with Randy Halprin?

3 A. Yes.

4 Q. And where did you speak to him?

5 A. In my office.

6 Q. And what about -- what time period are we
7 talking about? When was that?

8 A. That was during the early morning hours of the
9 29th.

10 Q. Okay. And Todd Plummer, did you also speak
11 with him?

12 A. Yes.

13 Q. And August, this -- you said you also spoke to
14 the doctors that treated the child?

15 A. Yes, I did. I talked with doctors at the
16 hospital the first night I was there and then I consulted
17 with them during the case about a week into it.

18 Q. All right. Let me show you first -- your
19 first entry would be the 18th of August. And we see the
20 first writing is, "Charity at hospital for chickenpox."
21 What did that reflect?

22 A. Well, Charity had been living at the Arlington
23 Night Shelter and she had had a sore on her face and gone to
24 the hospital and they determined it was chickenpox and
25 that's when she was asked to leave the shelter and that's

1 why I documented that.

2 Q. The last entry is, "Charity and Jerrod moved
3 to the Plummer's"?

4 A. Correct.

5 Q. Did they move in with the Plummers because of
6 that, that she was diagnosed?

7 A. Yes.

8 Q. And in between you had, "Randy babysat in the
9 shelter". Why was that important to you?

10 A. Well, because Mr. Halprin babysat while she
11 had gone to the hospital to be examined. And it was
12 important for me to document when individuals had access to
13 the child, especially by themselves.

14 Q. So the next date is the 19th. You have
15 written in, "Randy moves to the Plummer's"?

16 A. Correct.

17 Q. Does that reflect that he left the shelter and
18 moved in with the Plummer's, also?

19 A. Yes.

20 Q. So it was Charity Smith that moved in first
21 and then Randy?

22 A. Correct.

23 Q. Then on the 20th you have, "Randy babysits all
24 kids." What does that note reflect?

25 A. Well, the Plummers also had two children in

1 the home. And by the statements and information that I
2 gathered during the investigation, it all kind of came
3 together that that was the date that he was alone with all
4 of the children, the adult alone with all of the children.

5 Q. Your next entry is on the 22nd. And you have
6 written, "Jerrod limping, bruise on leg." What did that
7 reflect?

8 A. Well, the adults that I had talked to,
9 especially Charity, had said that he had begun limping and
10 he had a bruise on his knee.

11 Q. Okay. The second entry, "Randy says he caused
12 injuries." Is that a reflection of what Randy Halprin later
13 -- when he gave a voluntary statement to the Ft. Worth
14 Police Department?

15 A. Correct.

16 Q. On the 22nd he didn't admit to that?

17 A. That's correct.

18 Q. Okay. You're using the 22nd because that's
19 the date he said it actually happened?

20 A. Yes.

21 Q. Let me show you State Exhibits 948 and 949.
22 Is 949 an affidavit that Randy Halprin gave concerning the
23 events, the first affidavit that he gave?

24 A. Yes.

25 Q. And then 948, is that the confession that was

1 taken, actually, on September 4th of '96?

2 A. Yes.

3 Q. But in this confession, it relates that the
4 date was the 22nd when he says these events occurred?

5 A. Yes.

6 Q. All right. It also says, "Randy says he
7 caused the injuries. Everyone home." Was that also -- you
8 got that information from the voluntary statement?

9 A. Yes. He stated that everyone was in the home
10 when that occurred and he was alone in the room with Jerrod.

11 Q. Okay. The next entry is the 23rd. "Jerrod,
12 pus and bleeding from ear." You have got, "Columbia Med."
13 What does that stand for?

14 A. Well, they had determined -- I'm sorry.
15 Charity had observed Jerrod to have some pus and some
16 bleeding coming out of one of his ears and because of that
17 and the injury to what seemed to be an injury to his leg,
18 she decided to take him to the hospital and they went to the
19 Columbia Medical Center.

20 Q. What type of hospital is Columbia Medical
21 Center?

22 A. It's a hospital in Ft. Worth that just sees
23 any number of people. It's a private hospital.

24 Q. All right. And you noted, "ruptured eardrum
25 in one x-ray and dash nothing." What does that represent?

1 A. Well, the hospital said that he had a ruptured
2 eardrum and gave a prescription and they took one x-ray of
3 the leg and said that there was not any injury to his leg
4 that they could see.

5 Q. Based on your experience as a CPS
6 investigator, was that unusual for a hospital, such as
7 Columbia Medical to miss fractures in children, in infants?

8 A. I've seen that happen a number of times where
9 they get a second opinion or they get diagnosed later at a
10 Children's Hospital and injuries are found, yes.

11 Q. All right. Looking down now on the 25th,
12 which is the Sunday, you have entered, "Jerrod, leg swollen
13 and not walking on it. Penis swollen, Columbia Med." What
14 does all that represent?

15 A. Well, the leg that we were talking about up
16 here was worse and he wasn't walking on it. She had said
17 that he had started to crawl instead of walk. And then they
18 had seen that his penis was swollen up and they went back to
19 Columbia Medical Center.

20 Q. Under that is, "ant bite slash
21 anti-inflammatory"?

22 A. The hospital diagnosed the penis swelling as
23 an ant bite and gave him an anti-inflammatory medicine and
24 they didn't give any further information about the leg.

25 Q. And that's the same hospital that he had been

1 taken to on the Friday the 23rd?

2 A. Right.

3 Q. Then on Monday the 26th, it says, "Jerrod,
4 bruising on Jerrod's face, eye pink, saw tongue sores and
5 diarrhea"?

6 A. And these are all further injuries that the
7 adults in the home are seeing then on the 26th that
8 appeared.

9 Q. Did you actually see the tongue sores
10 yourself?

11 A. I saw pictures of those when I was -- after we
12 had been to the hospital, yes.

13 Q Then on the 27th, Tuesday, you have, "MO and
14 Ramie donate plasma"?

15 A. MO stand for mother, of course, we do
16 abbreviations.

17 Q. That's Charity Smith?

18 A. That's Charity Smith. And they went to donate
19 plasma so that they could have money to pay for
20 prescriptions.

21 Q. And under that you had Todd babysat?

22 A. Yes. And that's Ramie's husband and he
23 babysat the children while they were doing that.

24 Q. On the 28th you have, "Cook's Children's, more
25 bruising." Does that reflect the date that you got involved

1 when they took the baby to Children's, Cook's Children's?

2 A. Yes. And the reason I added more bruising is
3 they had decided to go there after more bruising was
4 observed on the face.

5 Q. Your next notation says, "X-rays, right leg
6 dash one week to ten days," and then, "arms, head, and left
7 leg less than one week, same incident." What does that
8 mean?

9 A. The x-rays that were taken at Cook's that
10 night were found to have those injuries and the doctors were
11 saying that those injuries all occurred at one time. The
12 right leg was a one week to ten days old and the other
13 injuries, I'm sorry, all occurred at one time. So the two
14 arm fractures, the skull fracture, and then the break in the
15 left leg all occurred during one time and they said that
16 happened within one week.

17 Q. Okay. So the two arms, the left leg, and the
18 skull fracture occurred in the same incident?

19 A. Yes.

20 Q. Which is what you have written at the bottom?

21 A. Correct.

22 Q. And that was from less than one week?

23 A. Yes.

24 Q. From this date? The 28th?

25 A. Yes. From the time he was seen in the

1 hospital, yes, in Cook's.

2 Q. And then the right leg is a week to ten days
3 old?

4 A. Yes.

5 Q. Is that based on your discussions with the
6 doctors?

7 A. Yes.

8 Q. So we're talking about two different incidents
9 with where the legs were broken --

10 A. Yes.

11 Q. -- during this time period?

12 A. Yes.

13 Q. This is why the timeline is valuable to you?

14 A. Correct.

15 Q. Now, after you had had these initial
16 conversations, when you were called in the 29th, who were
17 the people you were looking at from an investigative
18 standpoint of view who might have been the abuser here?

19 A. Well, after -- during the first night when we
20 were talking to all of the adults, a lot of the focus was on
21 Ms. Smith and on Mr. Halprin based on the accounts and their
22 access to Jerrod. During the interview that I had with Ms.
23 Smith, the very first interview, I went out to the sergeant
24 there from the Ft. Worth Police Department who I was working
25 with, and suggested to him that we probably needed to talk

1 to Mr. Halprin pretty quick, because it was looking as
2 though he had had quite a bit of access to Jerrod by
3 himself.

4 Q. And is that when you went to the apartment
5 later that morning to -- or the police officers went there
6 later that morning and brought him back?

7 A. Yes. They went and brought him in.

8 Q. Now, after a case had -- after Mr. Halprin had
9 confessed and a case was filed on him, a few months down the
10 line, CPS -- let me back up there.

11 Did Charity Smith get to keep custody of
12 Jerrod Smith that night after she had brought him to the
13 hospital?

14 A. She had actual legal custody, but she did not
15 have access to Jerrod. We did what we call a safety plan.
16 Child Protective Services does that in the high-risk cases,
17 because I did not feel she could take care of him at the
18 time. And so he was placed with grandparents.

19 Q. Okay. Eventually was custody of Jerrod Smith
20 taken away from Charity Smith?

21 A. Yes, it was.

22 Q. What kind of mother would you describe Charity
23 Smith to be?

24 A. She would be what I would describe as a
25 neglectful mother, one that -- she tends to leave her

1 children with people, with caretakers, who may not
2 necessarily be appropriate caretakers. She -- she -- she
3 just -- she is just basically a kind of a neglectful mom.
4 It's kind of hard to put that into words. When you look at
5 cases that I deal with every day and see people who aren't
6 necessarily abusive people, who just don't know how to
7 provide the proper care. They have children that they leave
8 with individuals or they can't take care of them or they --
9 for example, she has another child who she had given custody
10 to the grandmother because she couldn't take care of her.
11 So it's kind of a pattern with some of those moms.

12 Q. And that was prior to this?

13 A. Yes.

14 Q. There was another child that she had given
15 custody away to?

16 A. Yes.

17 Q. Were you satisfied, then, in this case that
18 you had the right person who was the actual abuser, the
19 physical abuser?

20 A. Yes.

21 Q. And that was Randy Halprin?

22 A. Yes.

23 Q. Charity Smith, obviously, wasn't going to win
24 any mother of the year awards, either?

25 A. Right.

1 Q. And eventually Jerrod was taken out of her
2 custody?

3 A. Yes.

4 MR. SHOOK: That's all the questions we
5 have. We pass the witness.

6 CROSS-EXAMINATION

7 BY MR. ASHFORD:

8 Q. Ms. Wagner, tell us about the previous child
9 removed. What happened in that case?

10 A. I wasn't the caseworker involved and I don't
11 know all the details. She had some CPS involvement which I
12 can't seem to get access to these days and I guess it's
13 because of the way our cases are on our computer.

14 But from my contacts with individuals,
15 including her and the grandparents, she -- she -- CPS was
16 involved with that child and then she voluntarily let the
17 grandparents have her in their care and she was not able to
18 get her back for whatever reason. I don't know.

19 Q. Well, you may not be able to find it now, but,
20 in fact, back in 1996, do you recall any more about the
21 previous case at that time? Did you have access to that
22 information at that time?

23 A. Um, I had -- I had documented in my records
24 that there had been previous -- if you will give me just a
25 second, I can look. Okay. There was a case involving a

1 child who was another -- some other family member child that
2 she was investigated for medical neglect on. That was found
3 to be reason, I believe. And there was two ruled out cases
4 involving Jerrod in '95. In '93 there was a
5 reason-to-believe case -- do I need to tell the jury what
6 reason to believe means?

7 Q. I'll ask you that, but go ahead.

8 A. For physical neglect in '93 of Carissa, which
9 was the older child.

10 Q. Okay. And CPS designates cases ruled out,
11 reason to believe, you have several designations, correct?

12 A. Correct.

13 Q. Ruled out means didn't happen or just couldn't
14 prove it?

15 A. Either/or. It could be either one of them.

16 Q. Either one?

17 A. Uh-huh.

18 Q. And the reason to believe means what?

19 A. It means based on the evidence, we do find
20 reason to believe that whatever it is, physical abuse or
21 physical neglect, that it did occur.

22 Q. Okay. And you get a little bit higher than
23 reason to believe is what?

24 A. No. That is -- there's one in between that's
25 unable to determine.

1 Q. Unable to determine?

2 A. Uh-huh.

3 Q. Okay. All right. Now, medical neglect would
4 be the child needs medical care, but the parent is not
5 taking care of it as they should; is that correct?

6 A. That's a good example, yes.

7 Q. Okay. There's some other circumstances that
8 that might encompass would be what?

9 A. Medical negligent? That could entail both
10 like physical needs, psychological needs, any kind of thing
11 that we would put under the medical category where they did
12 not, even though they had the opportunity, did not take care
13 of those needs.

14 Q. Okay. You also said as to the other child,
15 the girl, she had a physical negligent and there was reason
16 to believe there, correct?

17 A. Yes.

18 Q. Okay. What do you know about that?

19 A. I do not have any more information on that.

20 Q. Okay. Physical negligent would be an actual
21 -- some type of injuries, some type of beating, or something
22 of that nature?

23 A. Physical neglect is not usually going to
24 encompass any injuries. It's going to be that their
25 physical needs were not being taken care of.

1 Q. Now, those were to the other child. What did
2 you say as to Jerrod?

3 A. There had been two previous medical negligent
4 cases in '95 that were ruled out.

5 Q. And what do you know about those?

6 A. I can't find those. Those are on the
7 computer. I'm assuming that these have been purged off of
8 our system by now.

9 Q. Okay. And you say purged off of your system,
10 how would you go about finding those particular records?

11 A. Ruled out cases, they only stay on the system
12 for a certain amount of time and there probably isn't any
13 record of those.

14 Q. So is that on paper or computer or what?

15 A. Both.

16 Q. Okay. CPS does regularly keep records,
17 though, do they not?

18 A. Yes.

19 Q. And day to day, week to week, month to month,
20 they keep records; is that correct?

21 A. Yes.

22 Q. And they try to accurately record events as
23 they are taking place?

24 A. During cases?

25 Q. Yes.

1 A. Yes.

2 Q. And the records that CPS takes are usually
3 taken by someone that has personal knowledge of the event,
4 correct?

5 A. Yes.

6 Q. Okay. And CPS records are all fairly
7 standard-looking forms, correct?

8 A. Um, you mean the way we document on our
9 narratives? Is that --

10 Q. Yes.

11 A. Yes.

12 Q. Let me show you what I've marked as Defense
13 Exhibit No. 43 and ask you if you can identify it as a CPS
14 record.

15 A. Okay. Yes, this is an old form.

16 Q. Okay. Appear to be for Charity Smith and
17 Jerrod Smith?

18 A. Yes.

19 Q. Looking at the date, would that possibly be
20 one of the events that you are talking about?

21 A. Yes.

22 MR. ASHFORD: I offer Defense Exhibit No.
23 43 at this time.

24 MR. SHOOK: No objection.

25 THE COURT: Defense 43 shall be admitted.

1 Q. (By Mr. Ashford) Looking at Defense Exhibit
2 43, perhaps refresh your recollection as to what happened
3 with Jerrod Smith in '95?

4 A. Well, I didn't investigate this case.

5 Q. What does it appear, based on Defense Exhibit
6 No. 43?

7 A. Well, just at a glance -- and this is a form
8 that we used at the time for ruled-out cases -- this was one
9 of those that I was referring to in '95 that was ruled out.
10 And it says that there was no risk at the time.

11 Q. Okay. What was the reason for the
12 investigation?

13 A. I don't know exactly the reason, because
14 there's not -- the intake is not on here. But it looks like
15 it had something to do with him being at the hospital. And
16 I'm just kind of glancing here and she had gone back for
17 followup.

18 Q. Okay. I'll show you what has been marked as
19 Defense Exhibit 44 and ask you if you recognize that as a
20 CPS document? An old CPS document?

21 A. Okay. This is a document we use, yes.

22 Q. Appear to be referring to Jerrod Smith?

23 A. Yes.

24 Q. Okay. I want to go back to 43. And is there
25 some concern that Ms. Smith would not follow through with

1 giving Jerrod his medicines?

2 A. Yes.

3 MR. ASHFORD: Offer Defendant's 44 at
4 this time.

5 MR. SHOOK: No objection.

6 THE COURT: Defense No. 44 shall be
7 admitted.

8 Q. (By Mr. Ashford) Somebody is getting paid for
9 taking Jerrod to the doctor; is that correct?

10 A. This is -- the date is 12 of '96 and so that
11 was after he had come into foster care after my
12 investigation.

13 Q. Okay.

14 A. And this was the foster home. And we do help
15 provide medications and things to foster homes. So this was
16 a request for a special payment that we do out of Tarrant
17 County.

18 Q. He had an ear infection at that time and
19 pinkeye?

20 A. Uh-huh.

21 Q. Is that correct?

22 A. Yes.

23 Q. Did he continue to have problems with his ears
24 and ear infections even after he was in foster care?

25 A. I can't answer that. I was the investigator

1 and I wasn't involved with him after the investigation was
2 closed.

3 Q. Okay. Have you reviewed any records to that
4 effect?

5 A. I have not reviewed the records for throughout
6 the time he was in foster care.

7 Q. I'll come back and show you Defense Exhibit
8 No. 45 and ask you if that appears to be an old 1995 CPS
9 record?

10 A. Okay. Yes.

11 Q. Okay. Appear to be talking also about Jerrod
12 Smith?

13 A. This is the one that I was referring to with
14 the child by the name of Jason where she was with some other
15 family members.

16 Q. Okay. See Charity Smith's name in there?

17 A. Yes.

18 Q. Okay.

19 A. Yes, I do.

20 MR. ASHFORD: Offer Defense 45 at this
21 time.

22 MR. SHOOK: No objection.

23 THE COURT: Defense No. 45 shall be
24 admitted.

25 Q. (By Mr. Ashford) To save time I'll try to

1 point you to some things.

2 A. Okay.

3 Q. Here it's talking about Charity smoked in the
4 house?

5 A. Uh-huh.

6 Q. They asked her not to do so due to some
7 child's respiratory problems?

8 A. Uh-huh.

9 Q. Okay. Do you see in here Jason reported that
10 he also found bruises on Jerrod?

11 A. Yes.

12 Q. And that he saw Charity spanking him?

13 A. Yes.

14 Q. Okay. During the course of your
15 investigation, did you talk to anybody who suggested that at
16 times Charity Smith might have been physically abusive to
17 Jerrod?

18 A. I didn't have any indication from people that
19 I spoke to that Charity was physically abusive.

20 Q. Do you remember speaking to Ramie Plummer?

21 A. Yes.

22 Q. Do you remember Ramie Plummer giving you an
23 affidavit?

24 A. She gave Detective Camper an affidavit, yes.

25 Q. Okay. And that affidavit is included and is a

1 part of CPS records, is it not?

2 A. Yes, I have a copy of it.

3 Q. Okay. I'm going to show you what I have
4 marked as Defense Exhibit No. 46 and ask you, is that a copy
5 of Ms. Plummer's affidavit which is also a part of your CPS
6 records?

7 A. Yes, it is.

8 MR. ASHFORD: Offer Defense 46 at this
9 time.

10 MR. SHOOK: No objections.

11 THE COURT: Defense 46 shall be admitted.

12 Q. (By Mr. Ashford) In No. 46 does she talk
13 about things such as being in the Arlington Night Shelter
14 and seeing Charity Smith give Jerrod medicines just to make
15 him go to sleep when there was nothing really wrong with
16 him?

17 A. Yes, she did talk about that.

18 Q. By the way did you rule out Ramie Plummer and
19 Todd Plummer for any of these injuries or any abuse to
20 Jerrod?

21 A. Yes.

22 Q. Did you find Ramie and Todd Plummer to be
23 credible? Believable?

24 A. Did I -- I'm sorry, will you ask me that
25 again?

1 Q. Did you find Ramie Plummer and Todd Plummer to
2 be credible, believable people?

3 A. Um, I found them to be important parts of the
4 investigation. I can't -- I don't know that I can make that
5 judgment. I certainly found what they had to say was valid
6 information.

7 Q. But you ruled them out as being a part of any
8 of this abuse?

9 A. Correct.

10 Q. Okay. You see in here where she says that,
11 "Jerrod would never want to stay down and she tried to keep
12 him down, which would aggravate her and she would pull him
13 by the arm to make him stay in bed"?

14 A. Yes.

15 Q. And that's when she talks about just pouring
16 medicine in his mouth to shut him up and get him to go to
17 sleep, correct?

18 A. Right, yes.

19 Q. Todd Plummer give you similar accounts about
20 Charity Smith's treatment of Jerrod?

21 A. Um, you are going to have to refresh me on his
22 statement because I did not have a copy of that and I have
23 not been able to review that lately. I did talk to him, but
24 my conversation with him was a lot shorter than my
25 conversation with Ms. Plummer.

1 Q. You did hear from everybody in the house that
2 Randy was not a smoker, didn't smoke cigarettes?

3 A. That doesn't even ring a bell with me. I
4 don't remember talking about him smoking.

5 Q. Okay. I want to go back to Ms. Plummer's
6 affidavit again --

7 A. Okay.

8 Q. -- Defense Exhibit No. 46 and point out some
9 other things to you. Now, down here she's talking about
10 Jerrod having bruising on his arms and legs, correct?

11 A. Yes.

12 Q. And she says she doesn't know how they got
13 there, correct?

14 A. In here she says she didn't know how they got
15 there? I'm not sure where you are pointing to.

16 Q. Let me ask you this. Does she say in there
17 Jerrod was coming home from day care with a different bump
18 or bruise all the time?

19 A. She told us that Charity told her that, yes.

20 Q. And that her son attended the same day care
21 and they didn't have that problem?

22 A. Correct.

23 Q. It appears she's talking about over a period
24 of time, is she not?

25 A. While they were in the shelter, yes.

1 Q. Okay. I'll show you Defendant's Exhibit No.
2 47. Does that also appear to be another CPS record
3 pertaining to Charity Smith?

4 A. Yes.

5 MR. ASHFORD: Offer 47 at this time.

6 MR. SHOOK: No objection.

7 THE COURT: Defense 47 shall be admitted.

8 Q. (By Mr. Ashford) "I asked who was smoking in
9 the home when Jerrod was being abused and she said she did
10 and her roommate Todd. Randy Halprin did not smoke."
11 Correct?

12 A. That's what it says, yes.

13 Q. Would that have been you asking those
14 questions?

15 A. No, sir.

16 Q. Would that have been another caseworker?

17 A. Yes.

18 Q. Okay. There's an investigator like yourself
19 who's involved in the initial -- well, in CPS's initial
20 involvement that usually works close with law enforcement
21 and then there is a caseworker that takes over the case and
22 stays with the child through adoption or placement or
23 whatever; is that correct?

24 A. Yes.

25 Q. Okay. So there are going to be records of

1 CPS's involvement with Jerrod that span a long period of
2 time, correct?

3 A. Correct.

4 Q. And you are going to have many different
5 people that are going to have contact with him and everybody
6 involved in his life; is that correct?

7 A. Yes.

8 Q. To the best of your knowledge, after CPS took
9 Jerrod and put him in foster care, did Charity Smith express
10 desire to get him back?

11 A. In a way she did. During the time that I
12 still had the case, which would have been within a month's
13 time, we -- she was not visiting regularly. And I had to
14 confront her on that. After that period of time, I don't
15 know.

16 Q. Okay. So she verbally said that she did, but
17 she really didn't follow through. Is that what you are
18 trying to say?

19 A. Yes.

20 Q. Parents were given a service plan that tells
21 them what they need to do to at least try to get the courts
22 and CPS to agree to give their child back, correct?

23 A. Yes.

24 Q. And expresses the needs of the child and what
25 the child needs from that point, correct?

1 A. Yes.

2 Q. Now, one of the things that you often ask a
3 mother or father to do is to give a psychological, correct?

4 A. Yes.

5 Q. Okay. And you do a risk assessment, determine
6 what the risk is from that point on, correct?

7 A. Yes.

8 Q. Okay. And part of that you are going to look
9 at the history of the mother, correct?

10 A. Yes.

11 Q. Now, Charity Smith already had a history of
12 either neglectful or abusive situations with her children,
13 correct?

14 A. Neglect, yes.

15 Q. CPS gets involved with children when there are
16 allegations of abuse or negligent, correct?

17 A. Yes.

18 Q. And CPS had already been involved with Charity
19 Smith before this incident?

20 A. Yes.

21 Q. Okay. Charity Smith reported a history of
22 abuse in her past, correct?

23 A. Yes.

24 Q. Okay. Charity Smith was also someone who had
25 drug and alcohol problems, correct?

1 A. Yes.

2 Q. And in terms of her relationships, her
3 lifestyle, she was quite unstable, correct?

4 A. Yes.

5 Q. How old was Charity Smith at this time,
6 roughly?

7 A. I apologize, I don't know that one off the top
8 of my head. You are going to have to help me.

9 Q. About 20 years old sound about right?

10 A. About 20? Is that what you said? Probably.
11 Yes, she was 20.

12 Q. Did you also take an affidavit from Charity
13 Smith?

14 A. Detective Camper did, yes.

15 Q. Okay. That was a part of the CPS file, also,
16 correct?

17 A. Correct.

18 Q. But you talked to her initially before an
19 affidavit was taken, correct?

20 A. Yes.

21 Q. And she said the only person that took care of
22 her child was her; is that correct?

23 A. Within -- are you talking about within a time
24 period?

25 Q. When she was brought in and asked, "Well,

1 what's the potential for injury to your child during the
2 short time period?" She said, "I don't think anything could
3 have happened to my child because I'm the only one that
4 takes care of my child." Isn't that what she initially
5 said?

6 A. She told me the other individuals that did
7 have -- had been taking care of Jerrod during that initial
8 interview.

9 Q. Do you know what she said when she got to the
10 hospital as to who had access to her child?

11 A. I don't know what her initial statement at the
12 hospital was, no.

13 Q. Okay. And do you know she later expanded and
14 said, "Well, it's me and the people at the day care who have
15 access to my child"?

16 A. That's not the information she gave to me.

17 Q. Okay. I'll show you what's been marked as
18 Defense Exhibit No. 49 now and ask you if you recognize that
19 as being the affidavit of Charity Smith?

20 A. Yes, it is.

21 MR. ASHFORD: Offer Defense Exhibit 49 at
22 this time.

23 MR. SHOOK: No objection.

24 THE COURT: Defense No. 49 shall be
25 admitted.

1 Q. (By Mr. Ashford) Okay. I will direct your
2 attention to when he woke up from his nap, okay?

3 A. Uh-huh.

4 Q. She said he was trying to turn around and put
5 pressure on his knee and it collapsed, correct?

6 A. Yes.

7 Q. That might have been the knee that she was
8 talking about, the leg that was injured?

9 A. The leg that was already injured, that's my
10 assumption, yes.

11 Q. And she said, "It collapsed and he hit the
12 side of his head on the corner of the dresser," correct?

13 A. Yes.

14 Q. Okay. And she said, "It caused a knot and a
15 scrape on his forehead"?

16 A. Yes.

17 Q. Okay. Now, this timeline, I think you said
18 the doctor said the injuries occurred within this period of
19 time and then Mr. Shook asked the question as if the doctor
20 said the injuries all occurred at the same time or on the
21 same day.

22 Were the doctors that specific or did they
23 just say they occurred during that week period of time?

24 A. No. The first injury, the leg injury and
25 other injuries occurred at different times. And the other

1 ones occurred in that one -- in that one week period. The
2 other one was a week to ten days.

3 Q. Okay.

4 A. So they didn't pinpoint a date to me.

5 Q. Were there other individuals who had exclusive
6 custody or would have been alone with Jerrod during that
7 one-week period of time other than Randy Halprin?

8 A. Yes.

9 Q. That would have been who?

10 A. That would have been Charity Smith and the
11 Plummers.

12 Q. Okay. If you refer back to Ms. Plummer's
13 affidavit up there, the one with the dark print on it.

14 A. Okay.

15 Q. Okay. Not Ms. Smith's, but Ms. Plummer's.
16 Second page, one short paragraph, one medium paragraph,
17 third paragraph is the big long one?

18 A. I'm not sure that I have two pages of that.
19 Let's see. One moment. It's here.

20 Q. While I'm doing this, if you will just read
21 from I to yourself to about this part here?

22 A. Okay.

23 Q. Okay. She's explaining about Jerrod having
24 pinkeye the week before?

25 A. She said -- she said that her husband had the

1 pinkeye.

2 Q. Okay. And --

3 A. And Jerrod's eye was pink.

4 Q. And Jerrod's eye was pink the week before.

5 And she's also talking about Charity looking in Jerrod's
6 mouth and giving an explanation about the blisters; is that
7 correct?

8 A. Yes.

9 Q. And she says when she got sick, she got
10 blisters on her tongue. Is that what Charity was saying?

11 A. Yes.

12 Q. So it appears Charity is trying to give an
13 explanation for the blisters?

14 A. Yes.

15 Q. Correct?

16 A. Yes.

17 Q. Okay. The Plummers had kids, also?

18 A. Yes, they did.

19 Q. Randy had baby-sitted them?

20 A. Yes, that's my understanding.

21 Q. I mean, the Plummers told you that?

22 A. Yes.

23 Q. They were having problems with their kids?

24 A. Not that was reported to me.

25 Q. Okay. Well, seeing as that you were

1 investigating what happened to Jerrod and who might have
2 been the perpetrator, it's pretty relevant that he also
3 might have baby-sat their kids; is that correct?

4 A. Correct.

5 Q. Do you know if that was on few or many
6 occasions?

7 A. I mean, I would have to look back through
8 notes. I know that they talked about one occasion that I
9 can recall that he baby-sat all the children together.

10 Q. Okay. Did you investigate their kids for any
11 injuries?

12 A. Yes.

13 Q. The morning of the 29th I went to the
14 apartment and talked to those children and examined them.

15 Q. They were old enough for you to talk to them,
16 some of them at least?

17 A. Yes. They were very sleepy that morning and
18 pretty much I was wanting to make sure they were safe and
19 they were free from injury at the time.

20 Q. And that's pretty standard, if a child is able
21 to tell you something, you want to hear from them, correct?

22 A. Yes.

23 Q. And you ask them if anybody's beat you or
24 spanked you and you asked them specifically did Randy do
25 anything to them or what did you ask them?

1 A. I'm sorry, I don't know exactly. That's been
2 a lot of years ago and I don't remember exactly what I said
3 to them at the time. As I said, it was very early in the
4 morning hours. Our concern was their immediate safety and
5 we did want to look at them and make sure they did not have
6 any injuries. I did talk to them very briefly, but these
7 children were tired. We woke them up from their sleep.

8 Q. You are not telling the jury that you would
9 have let them be in danger just because they were tired,
10 correct?

11 A. Correct.

12 Q. If you had thought there was anything there,
13 you would have certainly followed up for their safety?

14 A. Correct.

15 Q. Now, if you had a perpetrator in mind, even
16 though you might not remember specifically, would you have
17 normally asked, hey, did this guy do anything to you or
18 would you have been more subtle and asked them has anybody
19 spanked you or anybody hurt you?

20 A. I would have -- yes. We try not to do --ask
21 leading questions. So I would have asked a more subtle
22 question.

23 Q. Okay. And, actually, if you got people who
24 believe in corporal punishment, as opposed to people who
25 don't, I mean, if you asked a little kid did anybody beat

1 you or did anybody hit you or something like that, they may
2 be talking about a spanking, correct?

3 A. If you ask it that way, correct, yes.

4 Q. All right. Some kids will report what a
5 parent might think is a spanking in response to a question
6 that you might ask to determine if they have been abused,
7 correct?

8 A. Well, I guess my short answer would be yes.

9 Q. I'm not trying to say you believe it at that
10 point. You have to follow up and see what the case may be.
11 But that's a potential situation where a kid would answer
12 positively to your question as to whether anybody had
13 spanked them or hit them or anything like that, correct?

14 A. Yes.

15 Q. And you didn't come up with anything to
16 suggest that Randy had injured any of those kids?

17 A. Not that they had been injured at all, no.

18 Q. The Plummers didn't seem to have that concern?

19 A. No.

20 Q. Okay. How far did you follow this case?

21 A. Through the investigation stage.

22 Q. Okay. And that would have been approximately
23 when?

24 A. Investigations take approximately 30 days.

25 Q. Were you present when Randy Halprin gave a

1 statement?

2 A. No, I was not.

3 Q. Okay. Did you have information that he
4 eventually entered a guilty plea for a 30-year sentence?

5 A. Yes.

6 Q. Did you follow the case at least that long?

7 A. I was aware that that happened, but I can't
8 follow all the cases through. I mean, I wasn't aware of
9 what was going on in the child's life and all the
10 individuals, no.

11 Q. Have you been present when investigators took
12 statements from alleged perpetrators before in CPS cases?

13 A. When the detectives?

14 Q. Yes.

15 A. Yes.

16 Q. Okay, what's that scenario like?

17 A. When they take a statement from them?

18 Q. Yes.

19 A. They normally in cases that I've been involved
20 in, we've both done interviewing of the individual and at
21 the time the statement is being given and put on paper, they
22 are telling the story of what they've already reported and
23 it's being typed out.

24 Q. Usually done in pretty close quarters?

25 A. It depends on where it's being done. We have

1 different locations.

2 Q. All right. Usually the detective, the
3 defendant, and maybe another detective or in some cases an
4 investigator such as yourself, correct?

5 A. Yes.

6 Q. Okay. Usually not a lawyer there?

7 A. Not usually. I suppose there could be.

8 Q. Is there anybody there for the defendant to
9 hold their hand, give support?

10 MR. SHOOK: Judge, we'll object to the
11 relevance.

12 THE COURT: Sustained.

13 Q. (By Mr. Ashford) Did Ms. Smith also have a
14 lack of education and training skills?

15 A. Um, I don't recall what her education level
16 is. Let's see. Yes, she had eight years of schooling.

17 Q. Do your records reflect that she had a history
18 of expressing angry feelings in an inappropriate manner?

19 A. Are you asking me a question?

20 Q. Do your records reflect that Ms. Smith had a
21 history of expressing angry feelings in an inappropriate
22 manner?

23 A. I don't know where that is in the records.

24 Q. Okay. If I showed it to you, would it refresh
25 your memory?

1 A. Yes.

2 Q. Okay.

3 A. Okay. Those aren't my records.

4 Q. Okay. Is that a CPS record, though?

5 A. Yes.

6 Q. Expressing angry feelings in inappropriate
7 manner, would probably be -- mean what?

8 A. Well, I mean, I can only assume that she's
9 talking about information that she had gathered throughout
10 the CPS history that we had. But I don't know specifically
11 what she meant by that.

12 Q. Could it mean taking anger out on her
13 children?

14 A. It could.

15 MR. ASHFORD: I'll pass the witness.

16 REDIRECT EXAMINATION

17 BY MR. SHOOK:

18 Q. Your investigation didn't show her to be the
19 abuser of Jerrod Smith, did it?

20 A. No, it did not.

21 MR. SHOOK: That's all we have, Judge.

22 MR. ASHFORD: Nothing further.

23 THE COURT: Thank you, ma'am, you may
24 stand down.

25 MR. SHOOK: May this witness be excused?

1 MR. ASHFORD: No objections, Your Honor.

2 THE COURT: She may.

3 MR. SHOOK: Call Sergeant Camper.

4 RENEE CAMPER,

5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. SHOOK:

9 Q. Would you tell us your name, please.

10 A. Yes. It's Renee Camper.

11 Q. And how are you employed?

12 A. I'm a Sergeant with the Ft. Worth Police
13 Department.

14 Q. How long have you been with the Ft. Worth
15 Police Department?

16 A. Thirteen years.

17 Q. And what division are you assigned?

18 A. Major crimes.

19 Q. What are your duties in major crimes?

20 A. I supervise the major case detectives, the
21 fraud detectives, court liaison, and missing persons.

22 Q. Okay. I want to turn your attention back to
23 August 28 of 1996 and ask you what division you were
24 assigned at that time?

25 A. I was assigned to the Crimes Against Children

1 Unit.

2 Q. What were your duties there?

3 A. I was a detective.

4 Q. Were you summoned out to Cook's Children's
5 Hospital on that day?

6 A. Yes.

7 Q. What was the purpose of your call on that day?

8 A. They had an injured child.

9 Q. And when you got to the hospital, did you see
10 the child?

11 A. Yes, I did.

12 Q. Let me show you a photograph marked State
13 Exhibit 941. Is that Jerrod Smith, the child that was
14 injured?

15 A. It is.

16 Q. What was going on with Jerrod when you got
17 there?

18 A. He was being treated by the medical personnel.

19 Q. Did you speak with the physicians that were
20 working with him?

21 A. Yes, sir.

22 Q. And did you also interview any civilians that
23 were there?

24 A. Yes, sir.

25 Q. Who was that if you recall?

1 A. Medical personnel, CPS.

2 Q. Now, the civilian employees -- I mean, the
3 civilians -- the mother?

4 A. The mother, yes.

5 Q. Okay. Was there a friend of the mother's
6 there, also?

7 A. Yes.

8 Q. Was that a woman by the name of Ramie Plummer?

9 A. Yes, it was.

10 Q. And did you get some affidavits from them?

11 A. Yes, we did.

12 Q. Did you also get an affidavit from a man by
13 the name of Randy Halprin?

14 A. Yes, I did.

15 Q. Do you see Mr. Halprin here in the courtroom
16 today?

17 A. Yes, I do.

18 Q. Where is he sitting?

19 A. He's right there.

20 Q. The man seated at the end with the coat and
21 tie at the end of the table?

22 A. Yes, sir.

23 MR. SHOOK: Your Honor, let the record
24 reflect the witness has identified the defendant.

25 Q. (By Mr. Shook) Now, did he give you an

1 affidavit that day?

2 A. He did.

3 Q. Where did that take place?

4 A. At the Crimes Against Children's Office.

5 Q. Let me show you State Exhibit 949. Is that
6 the affidavit that Mr. Halprin gave?

7 A. Yes.

8 Q. Now, the words contained in here, are they --
9 how were they placed here? Is this him dictating to
10 someone?

11 A. Yes, sir.

12 Q. Who does he dictate that segment to?

13 A. There's a secretary.

14 Q. Are you present at that time?

15 A. Yes, sir.

16 Q. The words contained in State Exhibit 949, are
17 they what his version of what he wants to put down in the
18 affidavit?

19 A. Yes, sir.

20 Q. All right. And you were the investigating
21 officer on this case; is that right?

22 A. That's correct.

23 Q. When you started looking at this case, who
24 were you looking at as the possible suspects that caused
25 these injuries to Jerrod Smith?

1 A. Initially we looked at all adult caretakers in
2 the home.

3 Q Did you narrow your suspects down to two?

4 A. Yes.

5 Q. Who was that?

6 A. The mother, the child's mother. I believe her
7 name is Charity. And Mr. Halprin.

8 Q. Okay. Now, I want to turn your attention to
9 September 4 of 1996 and ask on that day did you interview
10 Mr. Halprin?

11 A. I did.

12 Q. And this was a follow-up interview from the
13 first interview with him?

14 A. That's correct.

15 Q. During that interview did he admit to causing
16 the injuries to Jerrod Smith?

17 A. Yes, he did.

18 Q. Did he agree to give you a voluntary statement
19 at that time?

20 A. Yes, he did.

21 Q. Is that what we see in State Exhibit 948?

22 A. Yes, sir.

23 Q. Where did that statement -- where did you take
24 that statement?

25 A. At our downtown office.

1 Q. Okay. Prior to him giving you that statement,
2 did you go over the Miranda warnings with him?

3 A. Yes, sir, I did.

4 Q. And they are contained there on the statement;
5 is that right?

6 A. That's correct.

7 Q. And how was the statement taken?

8 A. Um, the same way. He dictates it to a
9 secretary who is present.

10 Q. Had he gone through the statement with you
11 before it was dictated?

12 A. Yes, sir. We had a brief interview.

13 Q. And then the statement was dictated?

14 A. That's correct.

15 Q. Now, I want to -- there's one part that's
16 written in. Originally it looked like the typed statement
17 said Thursday, August 29, 1996. That's scratched out and 22
18 REH is there written in?

19 A. That's correct.

20 Q. What does that indicate?

21 A. That indicates that he changed the date and
22 initialed it.

23 Q. Now, we're talking about he said in his
24 voluntary statement that the 22nd of August would be the
25 date that this happened; is that right?

1 A. That's correct.

2 Q. Which would be here?

3 A. That's correct.

4 Q. When you take a voluntary statement, do you
5 just put in it what the suspect tells you?

6 A. That's correct.

7 Q. If you think he's lying or minimizing in any
8 way, do you try to change the statement?

9 A. No, sir.

10 Q. This is his version?

11 A. That's correct.

12 Q. All right. Now, he talks and goes in some
13 detail about how these injuries occurred. Let me turn your
14 attention here to when he talks about hitting Jerrod. "The
15 first time I hit Jerrod he was sitting up on the bed and I
16 hit him up side the left side of his head, just a slap. I
17 hit him about five or six times. I didn't realize how hard
18 I was hitting him. He laid back down and I pulled him back
19 up and he was saying, 'mama'. And I said, 'Do you want to
20 go to mama,' and put him down. And then I kicked him on his
21 real hurt knee and then he fell down. I got back up and I
22 pushed him back down and he hit the floor real hard. I
23 pulled him back up right hard by the wrist and I was telling
24 him to stop crying. I didn't realize that was hurting him,
25 but I think that I could have broken his arms then. I could

1 have hurt his other leg when I was pushing him back down
2 because he was trying to stay off his hurt leg and he was
3 twisting, trying to get away, and I was shoving him back
4 down. I guess I hurt his eye when I slapped him because I
5 was slapping him hard enough to bruise his face. I wasn't
6 aiming for any particular place. I was just slapping him.
7 I got scared and I put him down on the bed and kept saying,
8 'I'm sorry, I'm sorry.'"

9 Now, do you recall when he went through that
10 sequence with you?

11 A. Yes, I do.

12 Q. And why is it that is something that you
13 recall?

14 A. Well, Mr. Halprin probably gave one of the
15 most animated interviews or confessions that I ever took
16 when he was describing that.

17 Q. When you say "animated," what do you mean?

18 A. He showed me. He described to me exactly what
19 he was doing. And like when he said he was slapping the
20 child, I mean, he went through saying he slapped him
21 repeatedly (demonstrating) and the part about where he says
22 "mama", he said the little boy was asking for his mama
23 saying, "I want my mama." And he was mocking him, saying,
24 "You want your mama?" And knocked him off of the bed and
25 got up. And, I mean, he got up out of the chair and

1 physically showed me how he was kicking the child. So I
2 will probably never forget that.

3 MR. SHOOK: Your Honor, can I have the
4 witness step down for a moment?

5 THE COURT: She may.

6 Q. (By Mr. Shook) Sergeant Camper, if you could,
7 just demonstrate the way Randy Halprin demonstrated to you
8 how he caused these injuries.

9 A. When I asked him how he slapped the child, he
10 repeatedly did like this (demonstrating) and then he made
11 the mocking face, saying, "You want your mama?" So then he
12 pushes the child off of there and then went to
13 (demonstrating) do like this where he was kicking the baby
14 on the floor.

15 Q. Did he demonstrate how the child was trying to
16 twist away from him?

17 A. Yes, he did. He said that the little boy on
18 his bad leg was twisting, trying to get away from him and as
19 he was doing that, he was kicking the child in the legs and
20 knocked him down to the floor.

21 Q. All right. Now, the statement does not
22 contain any information about him being under the influence
23 of acid or any other drug; is that right?

24 A. That's correct.

25 Q. Did he ever tell you that?

1 A. Never.

2 Q. If he had told you that he was under the
3 influence of acid or on acid or LSD at the time, would you
4 have put that in the statement?

5 A. Yes, sir.

6 Q. So at no time during the interview or while he
7 was dictating the statement did he ever mention that fact to
8 you?

9 A. No, never.

10 Q. Did you see any signs of remorse when he was
11 describing how he committed these injuries?

12 A. No, sir, he was rather matter of fact.

13 MR. SHOOK: We'll pass the witness.

14 CROSS-EXAMINATION

15 BY MR. KING:

16 Q. Detective, you talked with Mr. Plummer, did
17 you not?

18 A. I did.

19 Q. That was during the course of your
20 investigation?

21 A. I did.

22 Q. Mr. Plummer told you that everybody there at
23 the apartment had been doing some drugs, smoking some dope
24 and doing some acid, hadn't they?

25 A. No, sir, I don't recall that.

1 Q. You don't recall that at all?

2 A. No, sir.

3 Q. But if that's in an offense report some place,
4 that would just be some aberration?

5 A. I don't know what to tell you. I don't recall
6 that at all.

7 Q. Did you bring your notes of the interview that
8 you had with Mr. Halprin today?

9 A. Um, yes, just what I turned in.

10 Q. Do you have any handwritten notes that you
11 made back on that day?

12 A. No, sir.

13 Q. Was this videotaped or audio recorded?

14 A. No, sir.

15 Q. You were aware, were you not, that the child
16 had a severe earache. You were aware of that?

17 A. I was told that.

18 Q. Were you aware that also that the Plummers,
19 Mr. Plummer specifically, had pinkeye and they were
20 suffering from some pinkeye as well?

21 A. I do recall that, yes.

22 Q. Are you familiar with the fact that the child
23 sometime in December, once again, being treat for a severe
24 ear infection and pinkeye?

25 A. I don't recall about December, specifically.

1 Q. Very well. Do you recall from the statements
2 you took from the Plummers and from Ms. Smith that Ms. Smith
3 specifically told you the child had fallen and hit its face
4 on a dresser while it was trying to stand up one day?

5 A. I do recall that about her statement, yes.

6 Q. All right. It resulted in some of the
7 bruising that we see in the photographs and a cut on the
8 child's face; is that right?

9 A. I can't say. I can only tell you what she
10 told me.

11 Q. But that's in the statements, right?

12 A. That's in her statement, yes.

13 Q. Okay. She's talking about a bump on the
14 child's head and some type of cut and bruising on the
15 child's head that resulted not from Randy Halprin hitting
16 the child, but from the child having struck its head on a
17 drawer?

18 A. I can only tell you what she reported to me
19 and not conclusively what caused what injury. But, yes, she
20 did report that to me.

21 Q. All right. I understand. She also reported
22 that she got some type of blisters or ulcers in her mouth
23 when she was sick, did she not?

24 A. I don't recall.

25 Q. All right. Well, if that was in the statement

1 that Ms. Plummer gave that memorialized that particular
2 conversation, you just haven't refreshed your memory from
3 that particular document before you testified today?

4 A. I don't recall that about blisters, no.

5 Q. Okay. Now, you specifically asked Mr. Halprin
6 about whether or not he burned the child with a cigarette,
7 correct?

8 A. I did.

9 Q. Mr. Halprin was telling you that he flipped
10 out and started wailing on this kid, right?

11 A. That's correct.

12 Q. And how long had you been with CPS at that
13 point in time -- I'm sorry, with Ft. Worth and with the
14 child investigations?

15 A. Um, this was in August -- probably about a
16 year.

17 Q. Okay. But he admits striking and kicking the
18 child, just as he described to you; is that correct?

19 A. That's correct.

20 Q. But he said, no, I didn't burn the child with
21 anything.

22 A. That's what he said.

23 Q. Now, did you -- were you present at the time
24 of sentencing for Mr. Halprin?

25 A. No, sir.

1 Q. Did you follow the case through the court
2 since you were the officer that filed the case?

3 A. I did find out later that he had pled out. Is
4 that what you are asking me?

5 Q. Partially. I just want to try to find out --

6 A. I do check up on my cases, yes, to find out
7 what happened to them.

8 Q. Did you stay in touch with the District
9 Attorney or the Assistant District Attorney assigned to the
10 case to see what information was received at sentencing of
11 any kind?

12 A. No, sir.

13 Q. Now, did you explain to Mr. Halprin what
14 injuries the child had?

15 A. Um, I don't recall, honestly.

16 Q. Well, it appears -- I'm sorry, I didn't mean
17 to interrupt. Go ahead.

18 A. I'm sure that we discussed that, yes.

19 Q. All right. Because he's trying to explain how
20 what he might have done to cause the injuries to the arms,
21 correct?

22 A. That's correct.

23 Q. And he said, well, I grabbed the arms and that
24 might have been when I did that?

25 A. That's correct.

1 Q. So you were telling him, well, this kid has
2 two broken arms and two broken legs. Tell me what happened.

3 A. Right.

4 Q. Okay. Did you investigate or talk to any of
5 the people at the shelter in regard to Ms. Smith and her
6 child going to day care at the shelter?

7 A. That was included in the CPS investigation.

8 Q. That would not have been your particular
9 aspect of the investigation. Would that be a fair
10 assessment?

11 A. That's correct.

12 Q. So CPS might have looked at something like
13 that, but you didn't do that to see if the child had been
14 receiving some bruising on a regular basis or something?

15 A. They did do that. I know that for a fact,
16 yes.

17 Q. So you are aware that there was something to
18 indicate from Mrs. Plummer, possibly, the child was coming
19 back from day care with bruises?

20 A. I can't tell you the specifics.

21 Q. All right. I presume you have investigated a
22 lot of child abuse cases?

23 A. Yes, sir.

24 Q. You have investigated a lot of child abuse
25 cases with parents that have drug or alcohol or substance

1 abuse problems?

2 A. That's -- yes, that's true.

3 Q. And you have investigated a lot of cases where
4 children live in squalid conditions?

5 A. That's correct.

6 Q. Families don't have much education?

7 A. That's correct.

8 Q. All right. And I'm sure that you have
9 investigated cases where people just snap for some reason
10 and do something very, very bad?

11 A. Yes, I have investigated those cases.

12 MR. KING: I don't have anything further,
13 Your Honor. Thank you, ma'am. Pass the witness.

14 MR. SHOOK: Nothing further.

15 THE COURT: Thank you, Sergeant.

16 MR. SHOOK: May this witness be excused?

17 MR. KING: We have no objection.

18 THE COURT: She may.

19 MR. SHOOK: May we approach, Judge?

20 THE COURT: Yes.

21 (Bench conference)

22 THE COURT: Members of the jury, it's
23 only 3:00 in the afternoon and we have to balance the number
24 of witnesses that are available against -- we never know how
25 long a jury may be out deliberating.

1 At this time we are at conclusion for today's
2 testimony. We have a full day tomorrow. If you will, once
3 again, all the previous instructions still apply. Don't
4 talk about this case. Don't let anybody else share their
5 opinions, you know, everything else is still -- just because
6 we're in the second phase of the trial, all the previous
7 instructions remain.

8 If you would, be back tomorrow morning at 8:30
9 for continuation of this punishment phase of the trial.
10 I'll see you at that time.

11 [End of Volume]
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1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 29 day of
12 9, 2003.

13
14
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